DOCUMENT RESUME

ED 190 329 RC 012 180

TITLE American Indian Religious Freedom Act Report, P. L. 95-341.
INSTITUTION Department of the Interior, Washington, D.C.
PUB DATE Aug 79
NOTE 339p.: Some pages may not reproduce well due to small or broken type.

EDRS PRICE MF01/PC14 Plus Postage.
DESCRIPTORS Alaska Natives: *American Indian Culture: *American Indians: Attitudes: Beliefs: Conservation (Environment): Cultural Background: *Federal Indian Relationship: Federal Legislation: Government Role: Hawaiians: Land Use: *Religion: Religious Conflict: *Religious Discrimination: Tribes: Trust Responsibility (Government): United States History: Values
IDENTIFIERS *American Indian Religious Freedom Act 1978: Cemeteries: *Cultural Preservation: Religious Freedom: Rituals: Traditionalism

ABSTRACT

The American Indian Religious Freedom Act of 1978 requires federal agencies to respect the customs, ceremonies, and traditions of Native American religions. This report and its recommendations are the result of a multi-agency cooperative effort with Native traditional and tribal leaders to assure that the interference and insensitivity of the past will not be repeated in future practice. Part I provides an historical treatment of the pertinent events and actions which have resulted in the protection of the religious freedom of American Indians, Aleuts, Eskimos, and Native Hawaiians. Part II contains President Carter's statement upon approval of Public Law 95-341: a summary of the establishment and activities of the Task Force to implement the Act and prepare this report to the Congress: summary statements of Task Force member agencies: and a brief record of consultation with Native traditional religious leaders, as required by the Act. Part III contains recommendations on land: on access to sacred sites and objects: and on ceremonies and traditional rites, as they relate to federal agency practice. Part IV contains a narrative treatment of other issues identified as priority concerns during consultations, with discussions advanced as concepts for subsequent federal and tribal recommendations to the Congress. (Author/AN)

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AMERICAN INDIAN RELIGIOUS FREEDOM ACT REPORT

P. L. 95-341

Federal Agencies Task Force

Chairman, Cecil D. Andrus, Secretary of the Interior

August 1979

RC 012180

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
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PURPOSE

Section 2 of the American Indian Religious Freedom Act of 1978 (P.L. 95-341) requires a report to Congress one year from approval of the Act, containing the results of an evaluation, undertaken in consultation with Native traditional religious leaders, concerning administrative and legislative changes considered necessary for the protection and preservation of the religious cultural rights and practices of the American Indian, Eskimo, Aleut and Native Hawaiians.

Executive Summary

Native American tribes, nations and peoples survive as distinct groups within the American society. The policy of the United States is to support their right to cultural and political integrity, while assisting them to adapt to the rapidly changing economic and technological conditions of the modern world. All cultures change with the times and adapt to the conditions of their environment, as a matter of survival. The question is whether the United States government and American society have put unwarranted pressure on these cultures to change.

Native traditional religions are the fabric of Native American cultures. At one time, the repression of American Indian and Native Hawaiian religions by government agents was a common practice and these religions were held up to ridicule by American society. Partly out of ignorance and partly as a result of these regrettable practices and attitudes, federal policies and practices not directed toward Native traditional religions were also hostile or indifferent to their religious values. And, when the official policy of deliberate repression was ended, no comprehensive review was made of residual incidental impact of federal practices on Native American religions.

For example, Native American people have been denied access to sacred sites on federal lands for the purposes of worship. When they have gained access, they have often been disturbed during their worship by federal officials and the public. Sacred sites have been needlessly and thoughtlessly put to other uses which have desecrated them. Native people have been denied the opportunity to gather natural substances which have a sacred significance and have been disturbed in their use when they have been able to gather them.

Indian beliefs regarding care and treatment for the dead have not been respected by government officials in the past. At border crossings into Canada and Mexico, sacred objects, practices and customs have not been respected. In public institutions, including both prisons and schools, Native Americans have been denied equal rights to their religious practices, and opportunities have been given to Christian denominations to proselytize while Native traditional religious leaders have been excluded.

In light of this history and the lack of a comprehensive review of the effect of past practices, the Congress passed the American Indian Religious Freedom Act of 1978 (P.L. 95-341, 42 USC 1996). On August 11, 1978, President Carter approved the Resolution, recognizing it as "an important action to assure the religious freedom of all Americans."

The Act includes American Indian, Aleut, Eskimo and Native Hawaiian people in its provisions. Here, as in the Resolution, the terms American Indian, Native American and Native are used interchangeably, with the last two terms used primarily in this report. It is important that the reader recognize that there are significant differences in federal law and policy in relation to American Indians, Alaska Natives and Native Hawaiians. However, while the legal, treaty and reservation distinctions do exist, the basic traditional values and spiritual relationships are barely distinguishable.

Federal agencies are now required by law to respect the customs, ceremonies and traditions of Native American religions. For one year the agencies have examined their policies and procedures, working with Native traditional and tribal leaders to assure that the interference and insensitivity of the past will not be repeated in future practice. This report and its recommendations are the result of a multi-agency cooperative effort, undertaken in close consultation with practitioners of the Native traditional religions.

With this new policy, it is now possible to administratively accommodate most of the Native religious needs under existing statutory authority, as delineated in Part III, Recommendations. Many agencies have achieved results in removing Native religious freedom impediments; have developed internal mechanisms for continuing consultation on specific concerns; are preparing policies which will enhance Native religious freedom nationally; and have incorporated the new policy into existing procedures and practices of their field offices.

Several agencies' initiatives have been combined into Task Force recommendations for uniform administrative procedure. Where it has been determined that administrative accommodations cannot be made under existing statutory authority, the Task Force has developed recommendations for legislative action concerning federal land-use designations for Native sacred sites, Native religious use of site-specific lands, protection of sites against vandalism and non-tribally controlled excavations, strengthening of conservation and antiquities laws and the exportation of significant objects in Native religious use. Those recommendations are currently being reviewed within the Administration.

Part I, Introduction, provides an historical treatment of the pertinent events and actions which have resulted in the protection of the religious freedom of American Indians, Aleuts, Eskimos and Native Hawaiians.

Part II, Categorical Actions Under the Act, contains the President's statement upon approval of P.L. 95-341; a summary of the establishment and activities of the Task Force to implement the Act and prepare this report to the Congress; summary statements of Task Force member-agencies; and a brief record of consultation with Native traditional religious leaders, as required by the Act.

Part III, Recommendations, follows the categorical areas of Congressional note in the Resolution: land and access to sacred sites, including cemeteries; sacred objects, including those gathered, transported and possessed by museums; and ceremonies and traditional rites, as they relate to federal agency practice. Examples of administrative responses to the expressed concerns are found throughout this section, together with recommendations for uniform administrative procedure.

Part IV, Conclusion, contains a narrative treatment of other issues identified as priority concerns during consultations, with discussions advanced as concepts for subsequent federal and tribal recommendations to the Congress.

The Appendices include an account of the progress and passage of the American Indian Religious Freedom Act in the 95th Congress, relevant materials on the Act itself, initial evaluations and reports of Task Force member-agencies; tabular presentations of problems identified during the period of consultation and guides to the consultations and written submissions.

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I. INTRODUCTION - HISTORICAL OVERVIEW

> A missionary once undertook to instruct a group of Indians in the truths of his holy religion. He told them of the creation of the earth in six days, and of the fall of our first parents by eating an apple.
>
> The courteous savages listened attentively, and, after thanking him, one related in his turn a very ancient tradition concerning the origin of the maize. But the missionary plainly showed his disgust and disbelief, indignantly saying:
>
> "What I delivered to you were sacred truths, but this that you tell me is mere fable and falsehood!"
>
> (The Soul of the Indian - Charles Eastman)1/

Historical Treatment of Native American Religions

The incident involving the exchange of creation stories gives an eloquent testimony to the manner in which non-Indians have generally received the Indian religious tradition. While proclaiming their own traditions to be infallible and literal truths, non-Indians have not accorded other religions the same courtesy. Indeed, Eastman's story continues with the Indians reproving the missionary for his lack of manners and his violation of the rules of civility.

The Spanish, uncertain about the theological status of the Natives, and to make certain that conquests proceeded according to Christian principles, adopted the famous "Requirement," which had to be read formally to the Indians they encountered before any hostilities could commence. The Requiremento began with a brief history of the world since its creation, continued with an account of the establishment of the Papacy and described the donation by Pope Alexander IV of the lands then occupied by the Indians to the kings of Spain. The Indians, after hearing these sacred words, were supposed to acknowledge the lordship of the kings of Spain and to allow the Christian faith to be preached to them. Failure to surrender to the Spanish by the Indian justified whatever cruelties then followed and made the ensuing war theologically proper. While harsh in the extreme, this formalization of religious conflict at least had a theological and doctrinal base that the Europeans understood and which the Indians came rapidly to understand and abhor.2/

The Pilgrim Fathers adopted a similar posture. They lacked the absolute authority which the Papacy gave to the Spanish but consoled themselves with sermons by John Cotton, Cotton Mather and Increase Mather, or the strong opinions of William Bradford. Conflict was not long in coming after the landing of the Pilgrims. When John Robinson wrote to William Bradford in 1623, he expressed great concern about the killing of several Indians: "Concerning the killing of those poor Indians, of which we heard at first by report, and since by more certain relation. Oh, how happy a thing had it been, if you had converted some before you killed any!"3/ Later, when the whites of Massachusetts surrounded the principal village of the Pequots and burned it with all the Indian inhabitants, Bradford was to remark in his History of Plymouth Plantation:

> Those that scaped the fire were slaine with sword; some hewed to peeces, others rune throw with their rapiers, so as they were quickly dispatchte, and very few escaped. It was conceived they thus destroyed about 400, at this time. It was a fearful sight to see them thus frying in the fryer, and the streams of blood quenching the same, and horrible was the stinck and sente there of; but the victory seemed a sweete sacrifice, and they gave the prayers thereof to God, who had wrought so wonderfully for them, thus to inclose their enemise in their hands, and give them so speedy a victory over so proud and insulting an enimie.4/

Repulsive as this history must be, it is important that it be understood in the broader historical perspective. The adoption of the United States Constitution, with its prohibition of any governmental establishment of religion and guarantees of religious freedom, signified a new sense of religious maturity greatly transcending previous views of the relationships of Christians and Natives.

Post-Revolutionary pressures on the tribes east of the Mississippi presented great difficulties. During the first three-quarters of American political existence, Christian missionaries were critically important in providing educational services to the tribes and interceding for them with government officials. Indeed, the Rev. Samuel Worcester and some other committed missionaries, learning of the dilemma presented by the Supreme Court decision in Cherokee Nation v. Georgia 5/, which denied the Cherokees standing to bring a suit against the state, voluntarily accepted the laws of the Cherokees, thereby suffering arrest and imprisonment by the state and initiating the companion case, Worcester v. Georgia 6/, which upheld the treaty rights of the tribe.

Involvement of the missionaries in tribal affairs was not on the basis of Indian religious freedom, but primarily for the purpose of converting the Natives. Freedom of religion became quickly submerged when missionary endeavors and government policy became synonymous. Andrew Jackson, in his second Annual Message, described the progress in removing the Five Civilized Tribes from their homelands in the South and justified the Removal policy with the optimistic prediction that:

> It will separate the Indians from immediate contact with settlements of whites; free them from the power of the States; enable them to pursue happiness in their own way and under their own rude institutions; will retard the progress of decay, which is lessening their numbers, and perhaps cause them gradually, under the protection of the Government and through the influence of good counsels, to cast off their savage habits and become an interesting, civilized, and Christian community.7/

The coalescence of government and religious goals which was achieved before the Civil War became the predominant theme of interpretation for both churches and government agencies. Commissioner Taylor, a member of the Indian Peace Commission of 1867-68, remarked in 1868 in his annual report as Commissioner of Indian Affairs:

> ...Assuming that the government has a right and that it is its duty to solve the Indian question definitely and decisively, it becomes necessary that it determine at once the best and speediest method of its solution, and then, armed with right, to act in the interest of both races.
>
> If might makes right, we are the strong and they the weak; and we would do no wrong to proceed by the cheapest and nearest route to the desired ends and could, therefore, justify ourselves in ignoring the natural as well as the conventional rights of the Indians, if they stand in the way, and, as their lawful masters, assign them their status and their tasks, or put them out of their own way and ours by extermination with the sword, starvation, or by any other method.

But Taylor, recognizing that such a course of action would be a step backwards unworthy of the United States, argued:

> If, however, they have rights as well as we, then clearly it is our duty as well as sound policy to so solve the question of their future relations with us and each other, as to secure their rights and promote their highest interest, in the simplest, easiest, and most economical way possible.
>
> But to assume they have no rights is to deny the fundamental principles of Christianity, as well as to contradict the whole theory upon which the government has uniformly acted towards them; we are therefore bound to respect their rights, and, if possible, make our interests harmonize with them.8/

That Christianity and federal interests were often identical became an article of faith in every branch of the government and this pervasive attitude initiated the contemporary period of religious persecution of the Indian religions. It was not, to be certain, a direct attack on Indian tribal religions because of their conflict with Christianity, but an oblique attack on the Indian way of life that had as its by-product the transformation of Indians into American citizens. Had a Christian denomination or sect, or the Jewish community been subjected to the same requirements prior to receiving affirmation of their legal and political rights, the outcry would have been tremendous. But Indians, forming an exotic community which few understood, were thought to be the proper object of this concern. Thus the Supreme Court, in deciding an important law suit involving a conflict between the Missouri, Kansas, and Texas Railroad Company and the Osage Indians, justified its decision as follows:

> Though the law as stated with reference to the power of the government to determine the right of occupancy of the Indians to their lands has always been recognized, it is to be presumed, as stated by this court in the Buttz case, that in its exercise the United States will be governed by such considerations of justice as will control a Christian people in their treatment of an ignorant and dependent race...(Emphasis added)9/

Legislation also bore the imprint of this attitude. Mr.Perkins, Representative from Kansas, warmly endorsed the Dawes Severalty Act on the floor of House of Representatives, proclaiming:

> This bill is in keeping with the sentiment of the country, as it is, in my judgment, responsive to the best interests of the Indians, the best interests of the whites, and the best interests of the country generally. It has the warm indorsement and approval of the Secretary of the Interior, of the Commissioner of Indian Affairs, and of all those who have given attention to the subject of the education, the Christianization, and the development of the Indian race.10/

Church groups enthusiastically endorsed the Dawes Act and pushed for its passage. Bishop Hare of the Episcopal Church, when informed of its enactment, was heard to remark that "time will show whether the world or the Church will be more alert to take advantage of the occasion." The Church came in a distant second.

The executive branch, charged with administering the Indian agencies, represented the government's most persistent presence in suppressing the tribal religions. Most agents were political appointees, chosen for a long time with the consent of Church groups, and their religious bias was enhanced and strengthened by a dreadful ignorance of the parameters of tribal religions. Interpreting religion as primarily a belief system according to the familiar outlines of institutional religion with which they were familiar, many of the agents were horrified with the Indian ceremonial life and sought ways to suppress it. Very few non-Indians could distinguish between a war dance and any other kind of dance. Since the war dance in popular fiction, from James Fenimore Cooper to dime novels, was characterized as a prelude to savagery, dancing was particularly distasteful to non-Indians who were charged with performing various functions dealing with the tribes.

Examples of the sustained campaign conducted by federal employees against Indian dancing are numerous and in almost every instance the dances are characterized as representing barriers to government objectives in an unrelated field such as economic development, education, and reservation government. The prohibition against dancing was, in a larger context, the effort to transform Indian social life into a replica of the non-Indian social life since dancing was only the external and most obvious expression of a deeper, more sublime, and more sophisticated social manifestation of the Indian personality. In 1877, the Indian Agent for the Yankton Sioux reported his attempt to educate the Sioux to a different form of economic activity. He identified their social functions as a handicap in their progress toward this goal:

> As long as Indians live in villages they will retain many of their old and injurious habits. Frequent feasts, community in food, heathen ceremonies and dances, constant visiting - these will continue as long as the people live together in close neighborhoods and villages ... I trust that before another year is ended they will generally be located upon individual lands of farms. From that date will begin their real and permanent progress.11/

This then was taken up by officials in the Bureau of Indian Affairs. When the regulations under which the Indian courts were to be operated were revised by Commissioner Thomas Morgan in 1892, the first offense specified in the new regulations read:

> (a) Dances, etc.- Any Indian who shall engage in the sun dance, scalp dance, or war dance, or any other similar feast, so called, shall be deemed guilty of an offense, and upon conviction thereof shall be punished for the first offense by the withholding of his rations for not exceeding ten days or by imprisonment for not exceeding ten days; and for any subsequent offense under this clause he shall be punished by withholding his rations for not less then ten nor more than thirty days, or by imprisonment for not less than ten nor more than thirty days.12/

Suppression of religious practices by the reservation agents was a major factor in the reluctance of the Indians to adopt the white man's ways and, since it alienated the people unnecessarily, inhibited government programs during the time it was enforced. Indians quickly found ways to subvert the Bureau of Indian Affairs regulations. The Lummi and Nooksack peoples of Washington State performed their most important ceremonies on national holidays deliberately informing their agent that they were performing these rituals to honor the United States. The suppression of Indian dancing continued until the Indian Reorganization Act of 1934 and Indian religious freedom was one of the most important reforms initiated by John Collier as Indian Commissioner. A scant twelve years before Collier's reform, however, the Office of Indian Affairs released Circular No. 1665 (April 26, 1921) which read:

> The sun-dance, and all other similar dances and so-called religious ceremonies are considered "Indian Offenses" under existing regulations, and corrective penalties are provided. I regard such

> restriction as applicable to any dance which involves ... the reckless giving away of property ... frequent or prolonged periods of celebration ...in fact any disorderly or plainly excessive performance that promotes superstitious cruelty, licentiousness, idleness, danger to health, and shiftless indifference to family welfare.

In reviewing the history of federal treatment of Indian religions, it is important to note that little deliberate effort was made to eliminate religious practices because of their theological content. In this respect, the American treatment has been significantly more intelligent and responsive than previous treatment of Indian religions by both the Spanish and English colonial officials. There is one significant exception to this rule, however, and that consists of the violation of the sacred Pipestone Quarry in Minnesota. The quarry was a religious site of great importance to tribes for nearly a thousand mile radius. The quarry was under the protection of the Yankton Sioux people and in their treaties they took particular pains to ensure its sanctity. According to research done by their attorney, Jennings C. Wise (at one time an Assistant Attorney General of the United States), this quarry was deliberately damaged by the construction of a railroad through it in 1691 at the instigation of federal officials and missionaries who wished to destroy its value as a religious site. According to Wise, the sacred ledges which created the falls were deliberately blasted to erase all traces of their former outlines and to render them useless for ceremonial purposes.

In recent decades, there has been considerable interest in restoring both sacred lands and access to sacred places within the various federal lands to the religious leaders of the respective tribes. A major positive step in this respect was the return of the Blue Lake area to Taos Pueblo in 1973 and Mount Adams to the Yakima Nation in 1974. Although these land restorations were controversial at the time, they have been accepted as a tangible expression of the desire by the federal government and non-Indians to make amends for the previous suppression of Indian ceremonial life. Neither sacred site was diverted to other uses because of its religous significance, however, and so the solution of these specific problems is more in line with the types of continuing problems suffered by practitioners of Indian religions than the Pipestone Quarry situation.

The most critical aspect of past federal treatment of Indian religious activities, practices, and sacred locations is that abuses have for the most part arisen because of ignorance or misunderstanding on the part of the non-Indian. The treatment exemplifies what can happen to a religious minority when its tradition is radically divergent from that of a majority in a society. Fortunately, there are no major theological barriers to confront but only the lack of precise knowledge, coupled with a lack of respect which such ignorance brings. In order that the progress already made be used as a cornerstone for enduring and fundamental changes, it is necessary to probe deeper into the theoretical gulf which presently separates the Indian religious tradition from that tradition which is commonly accepted by the non-Indian majority. Only when some of the assumptions and presuppositions are clarified and each side can understand and communicate with the other can true understanding occur to prevent future conflicts in this delicate area of religious practice and freedom. One of the present difficulties plaguing non-Indians is the question of when protection of religion becomes its establishment. The next section deals specifically with this question.

Religion and Culture

A vast difference exists between the major or "world" religions and the religions of smaller tribal groups. This difference can be seen in every instance of contact, whether between the western religious traditions and the tribal peoples they have encountered or the established eastern religions and the corresponding tribal people they have encountered. The larger religions can best be described as "commemorative" religions. That is to say, these religions trace their origins back to a specific person or event (The Exodus, Jesus, Mohammed, Buddha, etc.) and the major portion of the religion deals with commemorating these sacred events in the proper ceremonies and rituals (Holy Communion, Passover, etc.).

The larger religions have as the mainstay of their beliefs the doctrine that their particular interpretation of reality is the most accurate expression of ultimate truth. In most instances this truth is revealed by the founder of the religion to a specific group of disciples with instructions to preach and teach others to accept the body of truths which has been set down. From this orientation, doctrines, dogmas, creeds and catechisms have been derived which are said to express the truth of the religion in more expanded and intelligible form. Doctrines concerning the person of Jesus and Buddha each took nearly half a millenium to formulate. In each generation, the theological enterprise of most major religions - but these two in particular - has been to restate the sacred truths for the society of its time.

Because of the extreme complexity of this enterprise and the absolute nature of the claims made by the major religions, in each instance religious institutions have been necessary so that the beliefs and formulas of the religion are not diluted by succeeding generations. Religion in many traditions, but particularly in the tradition of the west, has become an institutional activity and whenever this institution has too closely aligned itself with the political, social, economic, or educational structures, dissident groups seeking to return to the tradition have been produced. The religious tradition thus grows and expands through the production of beliefs and interpretations, heretical in one generation, the accepted interpretation in later generations.

Since these religions are commemorative and depend upon a reenactment of the original revelation, the location of rituals and ceremonies is not nearly as important as the continuing tradition in which the original truth is manifested. History and cosmic process thus become critical to these religions and eventually the claim is advanced that their conception of deity includes dominance over the historical process. Whether this process is conceived as an inexorable motion of a series of events, chronology of the religion is critically important and appeals are continually made to the "Faith of Our Fathers" with efforts in worship devoted to as close a recapture of original events as is possible. The "laws" of God, as expressed in doctrines, dogmas, creeds and catechisms, are infallible guidelines for relating to the march of history or the cosmic process.

Western peoples, particularly those presently inhabiting the United States, originate from this tradition. Many of the first people to arrive on these shores came because of the oppression they experienced when a select group of individuals dominated their religious institutions and forced them to accept beliefs and practices which they considered foreign, heretical, or unfaithful to the tradition. From these bitter experiences came the demand, upon the adoption of the Constitution, but first incorporated in Virginia's Bill of Rights, that no religious institution could be established by or become the official religion of the political institutions. Thus religious controversy which has plagued Europe and Christendom and which had flourished briefly in established denominational expressions in the colonies, had to be laid to rest permanently.

The smaller or tribal religions represent the opposite pole of human experience. Instead of commemorating events, these religions are what could best be described as "continuing" religions in that they are not traced to a founding or founder. Their origin is clouded beyond recovery and almost all of them can be said to be older, in a chronological sense, than the founded religions since we must assume that they existed in one form or another before the founding of any of the major religions, almost all of which can be dated with a fair degree of accuracy.

The tribal religions do not incorporate a set of established truths but serve to perpetuate a set of rituals and ceremonies which must be conducted in accordance with the instructions given in the original revelation of each particular ceremony or ritual. Of critical importance in this respect is the manner in which ceremonies arise. These religions have the ability and propensity to experience new revelations and each new ceremony which is received by the religious community is given for a specific purpose and must be performed at the place and in the manner, and wherever the original revelation demands, at the time designated. American Indian tribal religions, in many instances, have acknowledged that the present ceremonies, given to them at the beginning of this world, must be performed continuously or great harm and destruction will come to the people.

No doctrines, dogmas, creeds, or catechisms are permitted in these religions since these statements are secondary to the ceremonies and basically commentaries on them or interpretations of the original revelations and this kind of speculation is an absolute violation of the ceremony itself. Instructions are passed from individual to individual as tribal elders perceive the personalities, capabilities, and temperaments of younger tribal members. Since the instructions generally pass from individual to individual, and since the test is the successful transmission of the task, no institutions can arise in these religions. Only one interpretation is possible in each generation.

Religious growth is possible when a tribal individual receives a particular ceremony and instructions respecting it. Heretical and dissident groups, until very recently, did not exist because there was no central set of beliefs against which such contentions could have been measured. Either the ceremonies helped to fulfill tribal existence or they didn't and the test was in their efficacy, not their logic or rationality. Divergent traditions within a tribe, because they were all acceptable ceremonies, came to share the ceremonial year and were recognized as dealing with specific situations. Unlike the larger religions, the ceremonial year did not commemorate specific chronological historical events, and some ceremonies were reserved for occasions that warranted them. Not all ceremonies needed to be performed each year in the manner that the Christian year follows the life and passion of Jesus, for example. Some tribes in the Pacific Northwest had a "rain dance" in a region where it rains continually. The purpose of this dance was severely restricted, however, and was used only once or twice in each generation on those occasions when an unusual snow had made travel impossible. The dance brought rain which melted the snow and restored conditions to normal.

The most distinctive difference between the tribal religions and the larger religions in theological terms must certainly revolve about the idea of creation. For the larger religions the diety is the Creator who institutes natural laws which then govern the operation of physical nature, in most instances placing within our species an ability to recognize although not always fulfill the requirements of the moral dimension of the natural law. This natural law is the basis of the Declaration of Independence and it is to the free exercise of human conscience recognized in this law that the signers of the Constitution appeal. The ethics of other large religions have similar versions whereby they incorporate cosmic process and human conscience. But in this understanding a critical distinction is made between the world as created and the actual processes by which it operates.

The tribal religions regard the world as a continual process of creation and their concept of creator is simply one of identity, not one of function. With the world in a continual state of growth, creation being continuous, the requirement laid upon the human species is to move with cosmic growth and participate in it since we are part of it and do not stand outside it. The primary essence of the tribal religions is to remain in a constant and consistent relationship with nature and moral and ethical considerations must originate in a world which demands mature responsibility. Customs which adjust to the natural world and its inhabitants thus dominate the tribal religions where laws and institutions are the dominant factors in the larger religions.

When the freedom of religion is discussed in the context of the tribal traditions, it is the right to adjust to and maintain relationships with the natural world and its inhabitants that is addressed. Since each living entity is unique no authority can determine in advance what the specific occasion will require apart from the tradition which is being passed down. The ceremonies and rites themselves set fairly precise rituals and reveal in the performance of the acts their continuing efficacy. While no future revelations can be ruled out, it would be the rarest of events for a new ceremony to be introduced. Except in the most remote areas of Indian country, the urbanization of North America has precluded both Indian and non-Indian from the constant relationship with the natural world that would be conducive to the revelation of further ceremonies.

The establishment of a religion is not a problem when viewed from within the tribal context although tribes today live within the larger society. Establishment is fundamentally the imposition by the political institution of forms of belief and practice which are in conflict with or are distasteful to people of a different tradition. Protecting Indian religious practices from curiosity seekers, casual observers, and administrative rules and regulations is the only practical way that religious freedom can be assured to Indian tribes and Native groups. It is not the establishment of their religion because their religions, not being proselytizing religions, seek to preserve the ceremonies, rituals and beliefs, not to spread them.

Complaints occasionally arise that Native American religions have an exclusivity which, if protected, would mean the establishment of a tribal religion, in contrast to the separation of church and state which forms the basis of American civil freedoms. But this complaint is based upon the transfer of cultural attitudes and beliefs, most of which reveal the lack of understanding of Indian tribal religions, to the actual practices of the religions themselves. Not only are non-Indians excluded from some tribal religious ceremonies, but the unpurified Indians from outside the particular tribal traditions are excluded also. Unlike institutional religion, the tribal religions do not depend upon community participation, but upon the proper performance of the ceremonies. Exclusion is central to many ceremonies because participation is restricted to designated religious figures within the community according to the nature of the ceremony. Just as certain figures are the only ones ordained or designated to perform certain functions in the institutional religions, so in the tribal religions, there can be no ceremonies unless the proper persons perform them.

Native American Religious Freedom

The American Constitution represented a milestone in human thought. Separation of church and state and the guarantee of the sanctity of individual religious belief were radically new concepts in human government uniquely American in operation if not origin. The American experience has been one of building upon the foundations established by the Constitutional fathers and each generation has improved upon and sharpened the understanding of religious freedom in this country.

The Indian Reorganization Act recognized the difference in the cultural base of American Indian communities and established a principle of non-interference in Indian religious activities. Lifting the threat of intervention did not, however, guarantee religious freedom for American Indians because the nature of religious differences precluded proper understanding of the elements involved in tribal religions. During the 1970s with the restoration of the sacred lands of Taos Pueblo and Yakima Nation, additional recognition was given to the Indian religious traditions and its sometimes special needs for preserving intact those places sacred to particular Indian religions and communities.

House and Senate religious freedom resolutions enacted in the 95th Congress made explicit sentiments and understandings which had been implicit and growing during the preceding half century. It marked a formal recognition that interpretation of the freedom of religion and establishment clauses in the American Constitution were sufficiently broad to include religions of historically and culturally different peoples. This resolution recognized also that past treatment of American Indian religious ceremonies and practices had been uneven and has been conducted in an atmosphere of misunderstanding and lack of information which had at times produced hardships unnecessarily.

In recent decades, American society has become more sophisticated about the nature of religious conscience and more concerned about establishing guidelines for institutional activities so as to preclude them from unnecessarily creating hardships for individuals who sincerely attempt to live full and constructive lives based on a mature understanding of human existence. The modern period can be said to have originated with the dissenting opinions in the Macintosh 13/ case in 1931. That case dealt with the question of whether the statutory requirements for naturalization were satisfied by an applicant who testified that he was not willing to commit himself beforehand to bear arms in defense of the United States since he wished to reserve the right of moral judgment until confronted with a specific factual situation that demanded solution. Thereafter a line of cases leading directly to U.S. v. Seeger 14/, which affirmed the exemption from the Universal Military Training and Service Act of 1948 for conscientious objectors, served to expand public awareness of the social value of informed individual conscience. Today there is considerable concern with protecting the right of individual choice and personal growth in all areas of law.

The western tradition is based largely upon the principle of individual choice with the assumption that individuals honestly searching for solutions will arrive at understanding not radically variant from the teachings of the major religions as they have been traditionally experienced. The case of the American Indian has strong parallels to this principle, its only caveat being that the choice has already been made, by a community, prior to contact with other societies, and that communal conscience requires that the ceremonies be continued as they have traditionally been constituted and practiced. Once this parallel is understood, the problem of religious freedom of tribal peoples should present little difficulty. A few examples of misconception of the situation should illustrate the manner in which shortsighted or misguided interpretation of the behavior and beliefs of Indian communities has precluded Indian religions from assuming their rightful place in the mosaic which constitutes the American religious freedom tradition.

In 1882 the Sioux medicine man Crow Dog killed a leading chief of his tribe, Spotted Tail. Under the tribal traditions Crow Dog and his family made adequate compensation for the killing and the matter was considered closed by the Sioux. Since Spotted Tail was a well-known chief who had consistently sided with the United States, his murder set off a wave of public concern and Crow Dog was tried by a federal court in Deadwood, South Dakota and found guilty of first degree murder. His case was taken to the Supreme Court on a question of jurisdiction over the subject matter and the Court found for Crow Dog's position. Noteworthy is the comment by the Court in its opinion that imposition of an external federal law upon the Sioux:

> ... tries them, not by their peers, nor by the customs of their people, nor the law of their land, but by superiors of a different race, according to the law of a social state of which they have an imperfect conception, and which is opposed to the traditions of their history, to the habits of their lives, to the strongest prejudices of their savage nature; one which measures the red man's revenge by the maxims of the white man's morality. (Emphasis added.) 15/

Viewing the Indian religious tradition through culturally-biased glasses, the Court characterized the Sioux penalty for murder as the "red man's revenge," describing the federal law as the "white man's morality." In point of fact, the Sioux tradition required that compensation be made to the family of the victim and did not require retribution except in the most severe circumstances. The "white man's morality," however, demanded retribution in the form of capital punishment. The descriptions of each way of dealing with the crime derive not from an understanding in the jurisprudential sense but from popular misconceptions about who the people are. Today, the two different approaches to the crime might be characterized in reverse order, describing the white man's morality as savage and barbaric and the Indian approach humane and sophisticated. Indeed, several states have adopted compensation to victims of crimes as a principle of their criminal and civil codes.

In 1884, Senator Henry Dawes of Massachusetts visited the Five Civilized Tribes of Indian Territory (now the state of Oklahoma) to examine their method of land tenure, a practice which derived directly from their religious understanding of human relationships to the earth. Reporting the next year to the 1885 Lake Mohonk Conference which concerned itself with the formulation of Indian policy, Dawes remarked:

> The head chief told us that there was not a family in that whole Nation that had not a home of its own. There was not a pauper in that Nation, and the Nation did not owe a dollar. It built its own capitol ... and it built its schools and its hospitals. Yet the defect of the system was apparent. They have not got as far as they can go, because they own their land in common. It is Henry George's system, and under that there is no enterprise to make your home any better than that of your neighbors. There is no selfishness, which is at the bottom of civilization. Till this people will consent to give up their lands, and divide them among their citizens so that each can own the land he cultivates, they will not make much more progress. 16/

Discovering a political system with complex institutions which did not owe a cent and experienced no poverty within its society should have made Senator Dawes take notice and learn. With his predetermined idea of civilization, however, he could only describe the state of well-being of the Indians as a negative situation. Today as we strive to create Great Societies and resolve the problems of poverty, education, health care and the like, most Americans wish they could achieve the standard of civilized existence enjoyed by the Five Civilized Tribes in the 1880s.

These examples should forewarn us that application of a rigid set of criteria to human behavior without considering alternatives is dangerous at best and generally hazardous in its contemplation. The dreadful poverty and crime statistics which plague American Indian communities today are the result of misinformed neglect of the Indian religious tradition and the imposition of a set of external institutions and criteria on Indian communities. No deliberate effort was made to destroy the Indian institutions because of their divergent religious beliefs and practices. Yet few people in the previous century understood the larger parameters of social reality and tended to prejudge the Indian tradition according to the principles of their own cultural tradition.

With the enactment of the American Indian Religious Freedom Act, our Nation is being afforded the opportunity to correct past injustices and to begin anew with regard to treatment of those who adhere to the tenets of traditional Native religions. In countless ways in the past and present, both our government and our people have proved themselves equal to challenges inherent in new beginnings. This will be no exception.

FOOTNOTES

1. THE SOUL OF THE INDIAN, Charles Eastman, Houghton Mifflin Co. Cambridge, Massachusetts, 119-120
2. ARISTOTLE AND THE AMERICAN INDIANS, Lewis Hanke, Indian University Press, Bloomington, Indiana, 1959, pp. 15-16
3. THE INDIAN AND THE WHITE MAN, Wilcomb Washburn, Anchor-Doubleday, New York, 1964, pp. 176-177
4. THIS COUNTRY WAS OURS, Virgil J. Vogel, Harper & Row, New York, 1972, p. 42
5. 5 Pet. 1 (1831)
6. 6 Pet. 515 (1832)
7. Richardson, J.D. ed. *A Compilation of the Messages and Papers of the Presidents*, II, p. 519
8. *Report of the Commission of Indian Affairs*, 1869, p. 16
9. *Missouri, Kansas, & Texas Railway Co. v. Roberts*, 152 U.S. 114, 116-118, (1894)
10. *Congressional Record*, 49th Congress, 2nd Session, December 15, 1886
11. *Reports of the Commissioner of Indian Affairs*, (1877), pp. 75-76
12. *Report of the Commissioner of Indian Affairs*, (1892), p. 29
13. 283 U.S. 605 (1931)
14. 380 U.S. 163 (1965)
15. *Ex Parte Crow Dog*, 19 U.S. 556, 571 (1883)
16. *Lake Mohonk Conference Proceedings*, 1885, p. 43

II. CATEGORICAL ACTIONS UNDER THE ACT

A. White House

On August 12, 1978, the President issued the following signing statement on Senate Joint Resolution 102 on American Indian Religious Freedom:

> I have signed into law S.J. Res. 102, the American Indian Religious Freedom Act of 1978. This legislation sets forth the policy of the United States to protect and preserve the inherent right of American Indian, Eskimo, Aleut, and Native Hawaiian people to believe, express and exercise their traditional religions. In addition, it calls for a year's evaluation of the Federal agencies' policies and procedures as they affect the religious rights and cultural integrity of Native Americans.
>
> It is a fundamental right of every American, as guaranteed by the First Amendment of the Constitution, to worship as he or she pleases. This act is in no way intended to alter that guarantee or override existing laws, but is designed to prevent government actions that would violate these Constitutional protections. In the past government agencies and departments have on occasion denied Native Americans access to particular sites and interfered with religious practices and customs where such use conflicted with Federal regulations. In many instances, the Federal officials responsible for the enforcement of these regulations were unaware of the nature of traditional native religious practices and, consequently, of the degree to which their agencies interfered with such practices.
>
> This legislation seeks to remedy this situation.
>
> I am hereby directing that the Secretary of the Interior establish a task force comprised of representatives of the appropriate Federal agencies. They will prepare the report to the Congress required by this Resolution, in consultation with Native leaders. Several agencies, including the Departments of Treasury and Interior, have already taken commendable steps to implement the intent of this Resolution.
>
> I welcome enactment of this Resolution as an important action to assure religious freedom for all Americans.

B. Task Force

Following the approval of the American Indian Religious Freedom Act (P.L. 95-341; 42 USC 1996), the President's signing statement and the Act were circulated to legislative offices of all agencies, without regard to their potential applicability under the evaluation mandate. On January 26, 1979, the Secretary of the Interior transmitted a memorandum to all federal departments, agencies and instrumentalities, calling attention to the evaluation requirements and requesting a form response by February 12, indicating relevancy and representation. This form was transmitted twice to non-responding agencies. (Agencies not listed in this section failed to respond to all communications.)

1. Participation

Nearly 90 agencies responded to the inquiries on Task Force participation. Of these, thirty carried positive declarations as appropriate instrumentalities under the Act, including the Departments of Agriculture, Commerce, Defense, Energy, HEW, HUD, Interior, Justice, Navy, Transportation and Treasury; as well as the Advisory Council on Historic Preservation, American Folklife Center, Environmental Protection Agency, National Endowment for the Humanities, Tennessee Valley Authority and the U.S. Commission on Civil Rights. The evaluations of these and other participating agencies are summarized in the following section.

a. Comments from Responding Agencies

Several agencies, while declining Task Force participation, offered early evaluations worthy of note:

Office of Personnel Management - The Office of Personnel Management has no program responsibilities which would make us an appropriate agency to be on this Task Force. However, you should be aware of the fact that Title IV (entitled "Adjustment of Work Schedules for Religious Observance") of P.L. 95-390, September 29, 1978, requires the Commission (now OPM) to prescribe regulations providing for work schedules to accommodate employees' religious beliefs that require their absence from work. Conceivably, the proposed Task Force may reach conclusions which would require OPM modification of our regulations as they affect American Indians, Eskimos, Aleuts and native Hawaiians who are federal employees. The possibility of any modifications becoming necessary because of P.L. 95-341 appears to us remote. If any change does become necessary, from OPM's point of view the change would be too slight to warrant OPM's participation on the Task Force. (Assistant Director for Policy Analysis, Feb. 9, 1979)

Veterans Administration - You will note that we have indicated the Veterans Administration does not have policies, procedures, guidelines, rules, regulations or statutory authorization relevant to American Indians, Alaska Natives or Native Hawaiians, within the context of P.L. No. 95-341. I should mention that the Veterans Administration does have a regulation, VA Regulation 5062 (38 CFR § 13.62), which requires that, in cases where VA benefits are due an incompetent adult or minor Indian, who is a recognized ward of the Government, those benefits may be awarded to the superintendent or other bonded officer designated by the Secretary of the Interior to receive funds under 25 USC § 14. However, we cannot see that this regulation can, in any way, be considered as having an impact on the religious rights and cultural integrity of Native Americans.

In addition, the Veterans Administration entered into an agreement in 1978 with the Department of the Interior, Interagency Archeological Services, regarding excavations on VA property. Pursuant to this agreement, the Veterans Administration has recently requested Dr. Bennie Keel of your Atlanta office to assist in determining the proper disposition of Indian remains which were discovered some years ago at the Bay Pines, Florida, VA Medical Center. We expect that any such future discoveries on VA property will be handled in the same manner. Again, we do not believe that this type of activity or procedure is contemplated by P.L. 95-341. Certainly, the rarity of its occurrence (this was the first such episode that we can recall) would seem to argue against any active task force participation by this agency. (Administrator, Feb. 22, 1979)

U.S. Postal Service - In examining the legislative history of that Act, we find that one factor before the Congress was the matter of U.S. Customs Service enforcement of laws concerning the importation of certain controlled substances used in some Native American religious ceremonies. While the Postal Service administers criminal and civil mailability statutes that apply to some controlled substances (18 U.S.C. 1716 and 39 U.S.C. 3001), we find no indication that the mailability statutes have been considered relevant to the issues which led the Act to be adopted. (The Postmaster General, Feb., 16, 1979)

National Credit Union Administration - As of August 31, 1978, the following (percentages) breakdown of Native Americans were full-time employees of NCUA: GS-4 - 2%; GS-12 - 3%; GS-13 - 1%. NCUA's policies to assure compliance with the rights of all employees are explicitly broken down in the agency's Equal Opportunity Affirmative Action Plan. In regards to the legislation, this agency will take steps to assure Native Americans the right to observe their religious practices. This policy will be incorporated into our personnel regulations to assure compliance. Our agency has no direct authority for the enforcement of regulations assuring Native Americans access to particular sites for conducting various religious practices and customs to preserve their culture. In view of this, we do not believe it is necessary that we appoint a policy-level designee to serve on the Task Force to review government-wide recommendations and participate in preparing the Report to Congress on implementing the American Indian Religous Freedom Act of 1978. (Administrator, Mar. 12, 1979)

Administrative Conference of the United States - The Administrative Conference of the United States does not have policies, procedures, guidelines, rules, regulations or statutory authorization relevant to American Indians, Alaska Natives or Native Hawaiians, within the context of the American Indian Religious Freedom Act of 1978 (P.L. 95-341). The only activity that the Conference has undertaken relating to the rights of American Indians was its adoption in 1972 of a Recommendation on conflicts of interest in legal disputes involving the natural resources of Indian tribes. Recommendation 72-2 states that these conflicts stem from the Federal Government's dual status as trustee of the land and water rights of American Indians and as litigant in disputes between Indians and Federal agencies charged with responsibility for protecting Indian interests. The Recommendation suggests that legislation should be enacted to establish an independent Indian Trust Counsel Authority to assure adequate protection of American Indians' claims to natural resources and that, in the absence of such legislation, the Department of the Interior and the Department of Justice should take appropriate steps to ameliorate these conflict of interest problems. (Executive Director, Feb. 1, 1979)

Department of Labor - The only regulations issued by the Department of Labor relative to American Indians are those implementing the Comprehensive Employment and Training Act (CETA). A careful review of these regulations shows nothing that impinges upon any aspect of American Indian religious life. I might add that these regulations, which were just recently rewritten, have been reviewed by a cross section of the leadership of American Indian groups who have received CETA grants. In addition, the Indian and Native American CETA Coalition, representing many tribal and urban Indian organizations, worked very closely with the Department of Labor in the preparation of the regulations, and all of their significant suggestions were adopted. (Secretary of Labor, Feb. 15, 1979)

b. Listing of Responding Agencies

The following is a listing of other departments, agencies and instrumentalities which conducted reviews under P.L. 95-341, determining that: 1) their mandates, functions and authorities do not apply to the Act; or 2) their policies and procedures are in compliance with the Act.

Arms Control and Disarmament Agency, Commission on Fine Arts, Commodity Futures Trading Commission, Delaware River Basin Commission, Export-Import Bank of the United States, Farm Credit Administration, Federal Communications Commission, Federal Election Commission, Federal Home Loan Bank Board, Federal Labor Relations Council, Federal Mediation and Conciliation Service, Foreign Claims Settlement Commission of the United States, General Services Administration, Interior (Board of Indian Appeals, Bureau of Mines, Geological Survey, Public Affairs, Territorial Affairs, Micronesian Status Negotiations), International Communications Agency, International Trade Commission, Interstate Commerce Commission, National Academy of Sciences, National Aeronautics and Space Administration, Justice (Immigration and Naturalization Service, U.S. Parole Commission), Labor Department, National Capital Planning Commission, National Commission on Libraries and Information Science, National Science Foundation, National Transportation Safety Board, Nuclear Regulatory Commission, Occupational Safety and Health Review Commission, Overseas Private Investment Corporation, Pennsylvania Avenue Development Corporation, Pension Benefit Guaranty Corporation, Postal Rate Commission, President's Council on Physical Fitness and Sports, Selective Service System, Small Business Administration, Smithsonian Institution, Soldiers' and Airmen's Home, Susquehanna River Basin Commission, Transportation (U.S. Coast Guard, Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, National Highway Traffic Safety Administration, Research and Special Programs Administration, Urban Transportation Administration), U.S. Railroad Retirement Board, Treasury (Internal Revenue Service).

2. Organization

In establishing the Task Force, the Secretary of Interior directed that the report to the Congress be based on the internal agency evaluations and consultation with Native traditional religious leaders, as required by the Act. Agency evaluations are contained in Appendix B and summarized in Section C of this Report.

On April 2, 1979, the Task Force was convened for the purpose of setting schedules for receipt of agency assessments, discussing the consultative process and meeting with tribal religious leaders and Indian legal advisors. The Task Force members called for the scheduling of consultations or hearings prior to the preparation of the report, to allow for full consideration of the Native American concerns.

During June and July, ten consultations were conducted by the Task Force in Alaska, Hawaii, Minnesota, Montana, Nevada, New Mexico, North Carolina, Oklahoma, South Dakota and Washington. Following these meetings, which are detailed in Section D, the Secretary of the Interior convened a work group to meet for two weeks in July to prepare the report to the Congress.

Task Force coordination was undertaken by the Interior Assistant Secretary for Indian Affairs, as well as the function of maintaining liaison with the non-governmental consultation project (which is discussed later in this section) and the American Indian community generally. Costs involved in the field consultations and other work of the Task Force were absorbed by the Interior Indian Affairs offices, with the exception of travel costs incurred by other agencies' representatives.

Composition of this Task Force illustrates the general problem encountered by Native Americans as they approach the federal structure: 1) point of entry - which office within each agency deals with their concerns; and 2) level of decision-making - who has the authority to respond to their concerns. These points are reflected in the divergent levels of response to this federal policy participation effort. Below is a partial listing of Task Force membership by title and office, indicating 1) agency perception of Native American religious freedom as an organizational issue (i.e., civil rights, law and order, equal opportunity, economic development, anthropology, archaeology, public affairs, programs); and 2) the institutional level of attention afforded the Native American interest.

Department of Agriculture, Forest Service, Recreation Management Staff, Assistant Director, Dispersed Recreation.

American Folklife Center, Library of Congress, Director and Deputy Director.

Commerce Department, Economic Development Administration, Special Assistant for Indian Affairs.

Department of Defense, Office of the Assistant Secretary for Manpower, Reserve Affairs and Logistics (Equal Opportunity).

Department of Energy, Assistant Secretary for Intergovernmental and Institutional Relations, and Specialist for Indian Affairs.

Environmental Protection Agency, Office of the Deputy Administrator, Staff Assistant.

Department of Health, Education and Welfare, Deputy Assistant Secretary for Human Development Services, and Chairman, Intra-Departmental Council on Indian Affairs.

Department of Housing and Urban Development, Special Assistant to the Secretary (Indian Affairs).

Department of the Interior: Assistant Secretary for Indian Affairs and Special Assistant for Legislation and Liaison; Bureau of Land Management, Cultural Resource Program Leader, Division of Recreation and Cultural Resources; Bureau of Reclamation, Director, Office of Equal Opportunity; Fish and Wildlife Service, Deputy Associate Director, Wildlife Management, and Office of Wildlife Assistance; Heritage Conservation and Recreation Service, Office of the Director, Acting Chief, Division of State Programs, and Interagency Archeological Service, Archaeologist; National Park Service, Staff Archeologist, Office of the Assistant Secretary for Land and Water Resources, Special Assistant.

Justice Department, Associate Deputy Attorney General.

National Endowment for the Humanities, Division of Special Programs.

Department of the Navy, Deputy Undersecretary, and Office of General Counsel.

Tennessee Valley Authority, Office of Natural Resources, Manager and Cultural Resource Program Staff.

Department of Transportation, Assistant Secretary for Governmental and Public Affairs, Chief, Community Planning Assistance, and Chief Counsel, Civil Rights.

Treasury Department, Customs Service, Chief Counsel.

U.S. Commission on Civil Rights, Assistant General Counsel.

C. Summary Statements, Member-Agencies

1. Department of Agriculture

a. Forest Service

The Forest Service has had a continuing policy to seek out and involve the public in the development of management direction. Over the years local managers have worked closely with representatives of Indian groups in the planning and decision-making process. This input has been given full consideration in the formation of policies and procedures, both on a national and a local basis. With the passage of the American Indian Religious Freedom Act, a new awareness of the needs of the Native American is occurring within the Agency.

A task force was formed to review and evaluate the policies and procedures of the Forest Service relevant to American Indian religious freedom and to recommend changes as necessary. An interim policy was established directing line management officials at all levels that:

> "In the preparatory stage of land management planning, native traditional religious leaders will be notified of all public involvement activities and invited to provide input. If an issue concerning Indian religious freedom is identified, the cultural resource overview for the forest plan should provide substantive background on the traditional Indian religious practices within the planning area. When examination and consultation determine a need to protect and preserve certain lands or sites, this will be accomplished in and through the land management plan.
>
> "Each application by traditional Native Americans to use National Forest System lands for religious purposes shall be carefully considered. The careful consideration shall include those instances where a request involves an area under restrictions which would normally preclude the activity."

Review by field offices has not identified any policies or procedures which have a negative effect on or will result in abridgement of the religious freedom of Native Americans. During consultation however, representatives of the Native American Rights Fund identified such concerns as permit requirements, closure orders and cultural resource management that may infringe upon Indian religious freedom. In response, the Cultural Resources section of the Forest Service Manual has been rewritten to reflect the concerns of the Act. In addition, the Civil Rights and Permitting Sections will be revised to direct the Forest Service to consider the needs of American Indians in these potentially sensitive areas.

The Forest Service will continue to review these potential conflict areas in close cooperation with traditional religious leaders or their representatives to assure the protection and preservation of Native American religious rights and practices.

2. Department of Energy

For purposes of the Inter-agency Task Force on Indian Religious Freedom, the Department of Energy (DOE) has identified the protection of sacred sites as a potential problem area during the evaluation of procedures required in the American Indian Religious Freedom Act. To avoid in a systematic manner future religious infringements, the DOE is considering as a possible approach the following process, either as a regulation or as an internal issuance.

The DOE is interested in seeing that the free exercise of religion is protected efficiently without setting up an unnecessarily cumbersome mechanism. Therefore, it seems likely that the process will be integrated into the environmental review process which is already established, perhaps as part of the Environmental Impact Statement. The process would likely apply to both substantial involvement by DOE or direct authority for DOE's proposed activity which affects any specific site for which an environmental review is required.

Before the DOE would proceed with its proposed activity, an investigation would be made to ascertain if the site at issue is related to the religious rites or ceremonies or is a sacred site of any traditional religion which is currently being practiced by any American Indian, Eskimo, Aleut or Native Hawaiian.

If the investigation finds indications that the site is currently a subject of religious practices, then the Native traditional religious leaders shall be consulted, in order to determine whether the DOE proposed action would infringe on the free exercise of religion in any way and to gain an understanding of any impact on the Native American traditional religions. We foresee that the most difficult issue for the DOE will be whether its proposed alteration of a site would deny access to a sacred site or otherwise infringe on the free exercise of religion.

If consultation indicates that the proposed DOE action may infringe on the free exercise of religion, then alternate plans will be prepared with additional consultation with the Native traditional religious leaders. Alternate plans which do not infringe on the free exercise of religion will be examined to determine whether they adequately meet the goals of the DOE for the site.

The DOE will make all deliberate effort to adopt a course of action consistent with the policy enunciated in P.L. 95-341. We are very aware of the rulings of the United States Supreme Court that the Federal government may not abridge the free exercise of religion unless there is a compelling governmental interest at stake.

If no alternative is feasible and DOE finds upon consultation that its proposed action would deny the free exercise of religion, then the difficult question must be asked: How crucial is the project? To safeguard against the answer being made by the program people most intimately involved in the project, the finding will be made within the environmental review, as previously noted. Within the DOE the Assistant Secretary for Environment is structurally separate from the major program offices.

If the DOE's proposed action is deemed to be compelling, and must proceed, then the findings and justification would be reviewed by the IR Secretariat, which includes the Indian Affairs Office. Then the findings and justifications, accompanied by the Intergovernmental and Institutional Relations report, will be forwarded to the Secretary for written approval before a final action is taken. Upon the Secretary's final approval, notice will be given. The findings and justification will be published and communicated to the native traditional religious leaders or other concerned parties.

3. Department of Health, Education and Welfare

a. Administration on Aging

The Administration on Aging may provide social and nutritional services to the Indian elderly under Title III and Title IV of the Older Americans Act. Title III is a State administered formula grant program, while Title IV is a new program that provides direct funding to Indian tribes and organizations as defined by the Indian Self-Determination and Education Assistance Act (P.L. 93-638). The Older Americans Act provides for the acquisition, alteration, renovation or construction of facilities for use as multipurpose senior centers. However, Section 37(a)(14)(A)(iv) requires that a multipurpose senior center funded under Title III "will not be used and is not intended to be used for sectarian instruction or as a place for religious worship." This provision does not apply to programs under Title IV. However, to date there has been no appropriation of funds for the Title IV programs, thus all services currently provided to elderly Indians are governed by the provisions of Title III.

b. Education Division

The Assistant Secretary for Education indicates that the only agency which falls under the purview of the American Indian Religious Freedom Act is the Institute for Museum Services. The Institute currently is evaluating its policies and procedures to determine compliance with the Act.

c. Indian Health Service

The policy of the Indian Health Service (IHS) during the course of administering health services to American Indians and Alaskan Natives is to protect and preserve the inherent right of all Native Americans to believe, express and exercise their traditional religions. The IHS recognizes the value and efficacy to traditional beliefs, ceremonies and practices of the healing of body, mind and spirit. Faith is most often an integral part of the healing process and provides support for purposeful living. It is, therefore, the policy of the IHS to encourage a climate of respect and acceptance in which an individual's private traditional beliefs become a part of the healing and harmonizing force within his/her life.

The IHS staff has been instructed to inform patients they have the freedom to practice Native religion when desired by the individual or family member in case of minors, or when the patient's condition is such that he/she cannot make the request. When an IHS patient (guardian - family member) requests assistance in obtaining the services of a Native religious practitioner, every effort will be made to comply. Such efforts might include contacting a Native practitioner, providing space or privacy within a hospital room for a ceremony, and/or the authorization of contract health care funds to pay for Native healer consultation when necessary.

Each IHS Area Office has the responsibility to consult with the Native Americans within their respected area as to the desire of each tribe in relation to their religious beliefs concerning autopsy and other postmortem operations, disposition of a dead body, disposal of a limb or disposal/burial of a fetus, and to comply in respect to the belief. Individual consent is required by the IHS before action on any of the above can be made. Since a person's Native religious beliefs are often very personal, the patient's right to privacy must be respected in these matters. No IHS employee should be guilty of uninvited probing into or interference with a patient's private beliefs. Many Indian patients prefer to say nothing about these beliefs and practices. This is a right that must be respected.

Within this policy, IHS staff must continue to be aware of, sensitive to and respectful toward traditional beliefs and practices of the Native Americans. Procedures which would tend to interfere with, dilute or modify these historic beliefs and practices must be avoided. Care must be exercised so that IHS support, in whatever form it takes, does not become a wedge which creates dependency or wrests control from the chosen and honored Native practitioners of ancient and effective healing practices. The goal is that there be respect and complementary interface between the two systems of medicine and religion. Care must be taken that apparent IHS and federal beneficence does not become a means of destroying a system of healing which has both a long history and contemporary relevance.

d. Rehabilitation Services Administration

The Rehabilitation Services Administration (RSA) indicates that all of its policies and procedures are in compliance with the American Indian Religious Freedom Act. It is the policy of the RSA to modify traditional rehabilitation services to accomodate the religious convictions and practices of its service clientele.

e. Social Security Administration

The self-assessment conducted by the Social Security Administration did not reveal any policies or procedures which need to be addressed. However, the agency is willing to continue its review if Native American religious leaders wish to provide specific examples of areas which should be examined.

4. Department of the Interior

a. Bureau of Indian Affairs

The Bureau of Indian Affairs (BIA), among all the federal agencies, has had the longest and most extensive relationship with American Indian tribes, nations and peoples. For over a century and a half, BIA has carried out this Nation's policy regarding Indians. This policy has varied greatly over the years but until fairly recent times has been preoccupied with religious conversion and social acculturation.

The more modern and enlightened policy has been one of recognition of the strengths that are inherent in tradition and social bonds and building upon those strengths. This policy became our law with the enactment of P.L. 93-638, the Indian Self-Determination and Education Assistance Act of 1975.

The American Indian Religious Freedom Act is in keeping with the policy of Indian self-determination, and the BIA actively supported its enactment. The President, after approving P.L. 95-341, directed the Secretary of Interior to establish a federal agency task force for implementation of the law. The Office of the Assistant Secretary of the Interior for Indian Affairs has coordinated these efforts on behalf of the Secretary and the BIA has been an active participant in the consultative process, taking positive steps to facilitate Indian religious freedom.

One identified problem is the conflict between federal employment practices and the traditional religious obligations of many of the 12,000 Indian BIA employees. The Assistant Secretary for Indian Affairs has directed the BIA to develop a plan which will seek to accomodate employees' religious practices requiring time away from work, and to study the same problem as it affects students in BIA schools.

Many problems regarding the BIA operated schools are being met through contracting operation of those schools to tribes and setting up Indian parent school boards. This is being done under authority of the Indian Self-Determination and Education Assistance Act.

The newly published BIA regulations under the Education Amendments of 1978, take specific note of the religious freedom rights of Indian students. 25 CFR, Part 31(a), states BIA policy to: "promote and respect the right to cultural practices, consistent with the provisions of the American Indian Religious Freedom Act."

In 25 CFR, Part 31, the following are recognized: 1) the right to freedom of religion, and the right to be free from religious proselytization; 2) the right to cultural self-determination based upon tribal thought and philosophy; 3) the right to freedom of speech and expression, including choice of dress, and length of hair; 4) the basic right to an education requiring a staff which recognizes, respects and accepts the students' cultural heritage, its values, beliefs and differences; and 5) the right to a meaningful education which shall be designed to insure that tribal elders and members having a practicing knowledge of tribal customs, traditions, values and beliefs are utilized in the development and implementation of cultural programs.

The BIA is currently developing regulations for implementation of the National Historic Preservation Act, pursuant to the regulations issued by the Advisory Council on Historic Preservation. The BIA regulations will also address other statutes relating to cultural resources. Special attention is being given to P.L. 95-341 in the development of these regulations, which will help ensure that BIA activities and programs are conducted in a manner consistent with the American Indian Religious Freedom Act.

The BIA recognizes that, because of its special responsibilities to Indians, other federal agencies are likely to request BIA participation as a cooperating agency in the preparation of environmental impact statements on proposed actions which may affect the free exercise of Indian religious activity. The BIA will assist other agencies in these assessments to the extent its resources permit.

b. Bureau of Land Management

Pursuant to the requirements set forth by the American Indian Religious Freedom Act (42 U.S.C. 1996; P.L. 95-341), the Bureau of Land Management (BLM) initiated an evaluation of relevant policies and procedures, in order to determine possible impacts upon the religious practices and beliefs of Native Americans. Where present or potential impacts were identified, recommendations were made regarding the need for either internal adjustments or changes in legislation.

Many separate potential impacts revolve around the BLM's land-use management decisions. In developing its land-use plans, the BLM is guided by the principle of multiple-use management of the public lands, as set forth by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701). Relying on the inventory of the resources and values, the BLM, through its planning process, considers the present and potential uses of the land and formulates management plans based upon these uses. The BLM, therefore, has the overall policy and direction to incorporate socio-cultural values, such as Native American religious concerns, into its land-use planning and management systems. Many of the potential impacts upon Native American religious freedom can be avoided through use of these existing systems.

The BLM, through its cultural resource program, will continue to evaluate its policies and procedures relevant to Native American religious concerns and will work toward providing full consideration of socio-cultural values in its land-use planning and management systems. (See Appendix B, BLM, for initial evaluation of policies and programs.)

c. Fish and Wildlife Service

The mission of the Fish and Wildlife Service (FWS) is to provide the federal leadership to conserve, protect and enhance fish and wildlife and their habitats for the continuing benefit of the people.

In compliance with requirements of P.L. 95-341, the FWS has evaluated its policies and procedures in consultation with Native traditional religious leaders, in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices.

The FWS assessment of comments received during formal consultations identified some problems which have been rectified through policy changes and formulation. These changes include initiating a religious-awareness program for handling, presrving, storing and shipping eagles and eagle parts from the time a specimem is obtained to the time the requested items are mailed to the applicant. In addition to all eagle feathers and feet, golden eagle heads and breast bones will now be available to applicants through our permit system. A new policy has also been instituted making available excess buffalo on National Wildlife Refuges for Native religious ceremonial purposes. (See Appendix B, FWS, for initial evaluation of policies and programs.)

d. Heritage Conservation and Recreation Service - Interagency Archeological Services

In order to determine possible impacts upon the religious practices and beliefs of Native Americans, pursuant to the requirements set forth by the American Indian Religious Freedom Act of 1978, Interagency Archeological Services (IAS) has initiated a review if its relevant policies and procedures.

The primary concerns revolve around the potential impact of archeological investigations on ceremonial and habitation sites, and human osteological remains at these sites. In developing policy relating to these archeological investigations, IAS is giuded by the National Environmental Policy Act of 1969 (P.L. 91-190); Executive Order 11593; the National Historic Preservation Act (P.L. 93-291); Recovery of Scientific, Prehistoric, Historic, and Archeological Data: Methods, Standards, and Reporting Requirements (36 CFR 66); and the National Register of Historic Places and Comprehensive Statewide Historic Survey and Plans (36 CFR 60, 61). The concerns of Native Americans can be met through these legislative acts, either through amendments or additions. (See Appendix B, HCRS, for initial evaluation of policies and programs.)

e. National Park Service

On February 4, 1978, the National Park Service (NPS) issued Special Directive 78-1. This committed the NPS to a policy of concern with, informed awareness of and sensitivity to Native American issues, resources and sacred sites. This directive has served as an impetus to develop implementing guidelines, which is an on-going process.

With the signing of the American Indian Religious Freedom Act, the NPS has held consultations with Native American advocacy, secular and religious representatives, and is an active participant in the subject Task Force.

An assessment of the impacts of NPS legislative mandates, regulations, policies and programs on Native American religions has been prepared. In consultation with Native American representatives, these impacts are now under study at the park level and recommendations for future action are being prepared.

Through its natural and cultural resources programs, the NPS will continue to carry out its mandated missions, while being alert to possible impacts on Native American resources. Where necessary or practicable, such impacts will be avoided or minimized through alternative actions. (See Appendix B, NPS, for initial review of policies and programs, and NPS record of consultation.)

5. Department of the Navy

The Department of the Navy has been an active participant in the subject task force and has evaluated relevant policies and procedures in light of the American Indian Religious Freedom Act in order to determine what, if any, impact may occur upon the religious practices of Native Americans. The Navy has identified two specific problem areas at China Lake, California, and Kahoolawe, Hawaii. The Navy is diligently working to allow the desired access to these areas in a manner which is both safe to the participants and not disruptive to the Navy's mission. In May of 1979, a message was sent to all Naval stations by the Secretary making them aware of the requirements of the American Indian Religious Freedom Act and advising them to give deliberate consideration to legitimate religious concerns of Native Americans. The Navy will continue to cooperate with Native traditional religious leaders in an ongoing effort to ensure the free exercise of religious rights while at the same time ensuring the safety of all personnel and the completion of its military mission.

6. Department of the Treasury

a. Customs Service

After President Carter signed into law the American Indian Religious Freedom Act of 1978, the Commissioner of Customs, Robert E. Chasen, issued a policy statement on September 18, 1978, entitled "Policy to Protect and Preserve American Indian Religious Freedom." The policy statement transmitted a copy of the Joint Resolution signed by the President, together with the press release of the White House on the subject. (A copy of that policy statement is attached as Appendix B.)

In that policy statement, the Commissioner directed all Port Directors, District Directors and Supervisory Customs Inspectors, who have Customs officers working under their supervision and who are responsible for examining and clearing articles accompanying American Indians crossing our land borders, to make certain that Customs officers working under their supervision are fully aware of this federal policy of protecting and preserving for American Indians their inherent right to believe and practice their traditional religion. They are instructed to institute measures to assure that, in the course of their examination for Customs purposes, they treat more sensitively the various articles that are used by American Indians in the exercise of their religious and cultural beliefs.

In addition, to implement this policy, a Customs Indian Affairs Committee was established. The first meeting of the Committee was organizational in nature and was held in Albuquerque, New Mexico, where representatives of the American Indian Law Center and the Native American Rights Fund provided an excellent background briefing to the newly appointed committee members. It was decided that future meetings of the Committee should be held in different sections of the country so that as many tribal representatives as possible would have an opportunity to surface local problems they may be having with Customs officers upon crossing the border.

The second meeting of the Customs committee was held in Burlington, Vermont, on November 29 and 30, 1978. Twenty-six Indian participants attended together with the local Associate Regional Commissioner of the Immigration and Naturalization Service and two representatives from Canadian Customs.

The third meeting was held in Tucson, Arizona, on February 13 and 14, 1979. Sixty-seven Indian representatives participated together with representatives from the Immigration and Naturalization Service, Department of Agriculture, Bureau of Indian Affairs, American Indian Law Center, Native American Rights Fund and the offices of Senator Barry Goldwater and Congressman Morris Udall.

A fourth meeting of the Committee was held in June 1979 in Great Falls, Montana. More than 100 Indian representatives and government officials attended. Canada was represented by Customs and Agriculture officials.

While serving initially as a catalyst for the expression of apparently long-held grievances on the part of the respective Indian tribes or bands represented, the meetings have established a dialogue or communications link with dedicated Indian representatives who have brought to Customs attention certain problems which should be addressed and, hopefully, resolved. Sometimes the problem was merely a lack of uniformity in the application of established rules and procedures on the part of Customs officers in a particular port of entry. Wherever this was brought to our attention, steps were immediately taken to correct the matter and to assure uniformity in the future. Sometimes the problem stemmed from an unawareness on the part of some Indians to the full extent of their rights as returning residents to bring articles with them into the United States or that they could register valuable personal possessions with Customs before leaving the United States in order to avoid any hassle or possible assessment of Customs duty on their return.

In this regard, we had a news release prepared which highlights the daily and monthly entitlements to exemptions from payment of duty and similar rights which would be of particular interest to residents who live at or near the border and cross into Canada or Mexico on a frequent or even daily basis. Copies of this news release were disseminated for publication in tribal or other newspapers that are circulated amongst Indians.

In an effort to compile a complete listing of the various kinds of natural objects which have a religious purpose or significance to Native American Indians, reprints of the lists that were admitted into the record of the hearing on the Joint Resolution before the U.S. Senate Select Committee on Indian Affairs were distributed to spiritual and tribal leaders. They were requested to review the lists and add to them any articles which they believe should be included and return them. Once compiled, such a reference manual will be made available to Customs officers who may be confronted with such articles so they will be able to authenticate, on the spot, their stated religious purpose.

At each of the regional meetings, a local Customs representative was designated as a contact point available to Indian representatives whenever a problem with Customs officers arises in that particular border area. We believe that most problems will be able to be resolved locally. In the event it cannot be resolved at that level then it will, of course, be elevated to an appropriate policy-making level for resolution.

Only two problems have surfaced so far which have not been able to be completely resolved at the local level. One involves the manner and extent of examination of medicine bundles and sacred articles, which is being addressed at the national level. A booklet for Customs officers is in preparation with the cooperation of the Yaqui Indians which illustrates the Yaqui sacred masks and other sacred objects which are brought into the United States from Mexico. It is hoped that this booklet will make Customs officials more aware of Yaqui sacred objects. This particular project may serve as a model to be followed in resolving similar problems with other Indian tribes which arise out of insensitive handling by Customs officers of their sacred or religious articles.

The other problem involves the long-held grievance of Indians on both sides of the United States-Canadian border that their rights under the Jay Treaty to cross and recross the border freely and to carry personal goods duty free across such borders have been held by courts to be abrogated. This subject was discussed at some length at the Burlington, Tuscon and Great Falls meetings. The Indian representatives most directly concerned have expressed the hope that a recommendation will be made to the President that appropriate corrective legislation to restore such rights should be enacted.

7. Advisory Council on Historic Preservation

The Advisory Council on Historic Preservation was created by the National Historic Preservation Act of 1966 (P.L. 89-665, 16 USC 470 as amended) to advise the President and Congress on matters of historic preservation and to review and comment upon the impact of federal undertakings on historical, architectural, archeological and cultural resources of National Register significance. Section 106 of the National Historic Preservation Act requires that Federal agencies submit for review and comment by the Council all undertakings affecting properties included in or eligible for the National Register of Historic Places. The National Register does not list properties significant solely for religious reasons. Churches, for example, are listed only for architectural or historical reasons or if they contribute to the character of an historic district. Council comments on sites of religious significance to Native Americans occurs therefore, only when such sites are listed in the National Register for other than religious reasons.

Buried artifacts, human burials and religious sites that happen to be associated with significant archeological sites are all likely examples of situations where the values expressed in Public Law 95-341 could be incorporated with the values already covered under the Historic Preservation Act. Section 106 review and final resolution is based upon a professional assessment of the impact that "causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archeological or cultural characteristics that qualify the property to meet the criteria of the National Register." Since some properties in California, Washington and Idaho have been entered into the National Register for reasons of cultural significance to American Indians [under criteria (a) "Broad Historical Associations"], and do not have associated archeological or historical resources, the Council has the potential of being asked to comment on the effect of federal undertakings to these kinds of properties. Its comment, however, would be limited to the impacts covered under the Historic Preservation Act and the Council's Regulations (36 CFR 800), and would not be construed to be participation in the undertaking itself.

8. American Folklife Center, Library of Congress

The American Indian Religious Freedom Act of 1978 is very much in accord with the stated purposes of the American Folklife Preservation Act of 1976 (P.L. 94-201) to "preserve and present American folklife." Native Americans are a very important element in American folklife, and they have contributed greatly to the cultural richness of the Nation.

The American Folklife Center firmly believes that the religious rights and cultural integrity of Native Americans are in need of preservation. None of the provisions of the Center's enabling legislation interferes with the intended purpose of the American Indian Religious Freedom Act. In fact, out authority directs us to assist in the accomplishment of the purposes of this declaration, within existing personnel and financial resources of the Center at the Library of Congress.

It is out view and that of the folklife community that Native Americans be encouraged and assisted in preserving their religious and tribal beliefs and customs for present and future generations. One useful approach is through orderly and thorough documentation of these traditions.

The Center is anxious to encourage the preservation of these traditions primarily at the local level and in regional or national archives when consistent with the policies of tribal leaders. The Library of Congress with the financial assistance of the Bureau of Indian Affairs is undertaking a major project to transfer approximately 3,000 wax cylinder recordings to magnetic tape as part of an effort to preserve these recordings which contain in large part materials concerning Native American traditions. The cylinders are the property of the Library, the Smithsonian and the National Archives. When the duplication is completed, the collection will be maintained by the Library and, in addition, copies will be made available to appropriate tribal institutions.

9. Commission on Civil Rights

Pursuant to the implications and thrust of the American Indian Religious Freedom Act, 42 U.S.C. § 1996, the U.S. Commission on Civil Rights evaluated its policies and procedures as they may impact on Indian religious freedom. The U.S. Commission on Civil Rights is not an agency which administers federal laws, regulations or policies pertaining to Indian religious freedom; it, however, does have the authority to study issues of religious freedom and make recommendations concerning such issues to Congress.

A review of past projects indicated that there had been no Commission studies pertaining to religious discrimination against American Indians. In order to receive input for the review, the Commission actively participated in the consultation process with American Indian religious leaders. This spring, the Commission sponsored a consultation concerning religious discrimination which specifically included Indian issues. Several Commission publications have been revised to expand coverage of Indian religious discrimination issues.

10. National Endowment for the Humanities

The National Endowment for the Humanities is fully committed to the implementation of the American Indian Religious Freedom Act of 1978. All Endowment policy and programs are developed and administered in harmony with the goals of this Act. The Endowment firmly believes that the protection of Native American cultural rights is consistent and in accord with the agency's stated goals as directed by the Congressional act which established the National Endowment for the Humanities in 1965.

These goals are: (1) to promote public understanding and use of the humanities and to relate the humanities to current conditions of national life; (2) to improve the quality of humanities programs in educational institutions, and to encourage and assist nontraditional ventures in humanistic learning; (3) to enrich and broaden the intellectual foundations for humanistic endeavors, and to support scholarly additions to humanistic knowledge and (4) to sustain and enhance essential facilities and resources which undergird humanistic pursuits and to help inform the future role of humanistic concerns.

The Endowment is establishing an internal agency task force to monitor and promote the application of Public Law 95-341 in the areas of new agency policy considerations, grant application guidelines, grant evaluation procedures and agency staff education on the significance of the Law to all areas of Endowment policy and programs.

The National Endowment for the Humanities views the American Indian Religious Freedom Act (P.L. 95-341) as a significant measure in advancing research, education and public activity in the humanities.

11. Tennessee Valley Authority

In accordance with the policy set forth in the American Indian Religious Freedom Act, the Tennessee Valley Authority (TVA) initiated a review of its policies and procedures to determine possible infringements upon the free exercise of religion by Native Americans.

TVA has not identified any Agency policy or procedure which directly interferes with the exercise of traditional religion by Native Americans, although some Agency activities (such as construction) could have an impact upon these religious concerns. TVA is actively seeking to accommodate the religious rights of Native Americans, and is taking steps to further incorporate the religious concerns of Native Americans into the environmental reviews of proposed activities. In addition, consideration of Native American religious concerns is being factored into the land management and planning functions.

TVA recognizes its responsibilities under P.L. 95-341 and will continue to actively evaluate its activities and procedures relevant to the religious needs and concerns of Native Americans. (See Appendix B for initial evaluation of policies and programs.)

D. Consultation

1. Federally-Funded Religious Freedom Project

Prior to the enactment of P.L. 95-341, several federal agencies explored possibilities for an effective consultation process which would: 1) allow for two-way communications between the Native traditional religious leaders and the federal agencies; 2) provide to the Native American religious practitioners the legal and technical expertise necessary to evaulate past and proposed federal actions; 3) accord the opportunity for Native Americans to present their undiluted views as a part of the record; and 4) permit the federal agencies, particularly those with minimal past dealings with Native Americans, to work directly with those who are affected by administrative actions.

To facilitate this process, three agencies entered into an agreement to jointly fund two Native American legal associations for a parallel study to the governmental assessment required by the Act. Parties to the inter-agency agreement were the Administration for Native Americans (DHEW), the Community Services Administration and the Bureau of Indian Affairs, with project liaison activities coordinated by the Interior Assistant Secretary for Indian Affairs.

The religious freedom project was conducted by the American Indian Law Center and the Native American Rights Fund. The legal associations established a project advisory board comprised of American Indian, Alaska Native and Native Hawaiian tribal and religious leaders. Project activities included: 1) notifying Native Americans of the Act, proposed federal actions and Task Force consultations; 2) conducting legal, historical and cultural research on issues and problems identified by religious practitioners, tribes and agencies; and 3) assisting the Task Force and member-agencies to prepare their reviews.

Project and advisory representatives participated in all phases of the implementation of P.L. 95-341, including the preparation of the final report in draft. They met with the Task Force at its April 2 meeting in Washington, D.C., and its June 7-8 consultation on the Cheyenne River Sioux Reservation.

2. Member-Agency Consultation

Before passage of the American Indian Religious Freedom Resolution in the Senate, the Customs Service established its Committee on Indian Affairs (which is detailed elsewhere in this report). The Customs Committee has met with American Indians in key locations at the northern and southern borders of the contiguous United States for the purpose of addressing American Indian concerns, religious and otherwise. One of the Task Force consultations was held in conjunction with the Customs Committee, which will continue its activities beyond the required evaluation period.

The National Park Service (NPS) has also established an internal mechanism for continuing consultation on these issues. All NPS regions now have regional coordinators who serve as liaison with local, regional and Washington NPS offices and Native Americans. As a result of ongoing consultation, many park areas have waived fees for Native American spiritual visits and have accommodated traditional religious practitioners' needs for access to sacred sites and gathering plants for ceremonial purposes. The NPS is presently consulting with Native Americans on such policy matters as archaeological research, sacred site protection, burial ground disturbance and the concept of credentials of eminence, as well as with specific tribes and groups on an issue-by-issue basis. A record of NPS consultation can be found in Appendix B.

The U.S. Commission on Civil Rights, under its authority to study issues of religious freedom and make recommendations to Congress, participated in the Task Force consultations and specifically included American Indian issues in Commission-sponsored consultation concerning religious discrimination. During the period of consultation, the Forest Service encouraged its Regional Foresters, Station Directors and Area Directors to work with the religious freedom project and Native leaders in order to gain awareness of the Native American religious issues. Several Regions have met with local religious leaders as a result of this direction. Likewise, the Department of Energy has promoted local-level consultation with Native tribal and religious elders regarding contemplated sites and projects.

The individual agency consultations have opened new communications and already have produced results to the satisfaction of those agencies, tribes and groups concerned. Examples of these results - most notably with the Bureau of Land Management, Department of the Navy, and the Fish and Wildlife Service - are provided in Part III of this Report.

3. Task Force Consultation

Following the April 2 Task Force meeting, ten consultations were scheduled throughout the country. Notices of consultation were sent by the Department of the Interior and the religious freedom project to Native traditional religious leaders, Native Hawaiian groups, American Indian and Alaska Native tribes and villages and Native American national and regional organizations. Additionally, notices were sent to all BIA Area and Agency Offices and the NPS Hawaii State Office for distribution, as well as to Task Force member-agencies. Local coordinators for each consultation distributed notices in their areas and, where appropriate, notified tribal and regional press and officials.

Consultation sites were selected for a variety of reasons, including desire of the local tribes and Native communities for such a meeting, the needs on issues of particular regions, the availability of local coordinators and the specific interests of agencies active in the process. (Notices of consultation, charts of identified concerns and guides to the transcripts appear in Appendix C.)

The first consultation was held at the Cheyenne River Swiftbird Project, Cheyenne River Sioux Reservation, South Dakota, June 7-8, 1979, which was selected: 1) because the Department of Justice had an interest in a consultation focusing primarily on the needs of Native American prisoners, and 2) because of its location on a reservation where federal or national Indian meetings are seldom held. Swiftbird is a federally-funded alternative incarceration center for Indian inmates. It has special provisions for the religious and cultural needs of Indian people and its only fence is one built to keep the surrounding buffalo herd from scattering. Federal representatives of the Departments of Justice and the Interior and the U.S. Commission on Civil Rights met with religious leaders from the Cheyenne River Sioux and other Sioux reservations, as well as the religious freedom project advisory board, on issues related to penal institutions and the full range of concerns identified by the project representatives.

The second consultation was held in Cass Lake, Minnesota, at the Minnesota Chippewa Tribal Council Chambers, June 11-12, 1979, where statements concerning Native American prisoners were also raised, in addition to those of the Tribe and surrounding region. The Departments of Health, Education and Welfare and the Interior were represented (Social Security Administration, BIA and NPS), along with the Customs Service and Forest Service.

The third consultation was held in Honolulu, Hawaii, on June 13. Coordinated by the National Park Service State Director and atended by local representatives of Task Force member-agencies, the consultation involved Native Hawaiian religious leaders and practitioners from several of the Islands. The Department of the Navy held a special consultation on the morning of the same day, in connection with ongoing litigation, and participated in the afternoon session of the general consultation.

The fourth consultation took place on June 14-15, 1979, at the Chief Joseph Cultural Center on the Confederated Tribes of the Colville Reservation, Nespelem, Washington. Respresented were the Department of the Navy, Tennessee Valley Authority, U.S. Commission on Civil Rights, Forest Service and Department of the Interior (BIA, BLM, FWS, HCRS and NPS). As guests of the Nez Perce Band, Indian people of all tribes and religions Reservation-wide attended, as well as Indians from other tribes throughout the Northwest.

The Customs Service Committee on Indian Affairs and the Task Force combined efforts for a single consultation on cross-border issues, June 19-20, 1979, at Great Falls, Montana. American and Canadian Indian people from New York to Washington across the U.S.-Canada border attended, along with Canadian and U.S. Customs officials, and Fish and Wildlife, Forest Service, Indian Affairs and U.S. Commission on Civil Rights representatives.

The consultation at the Pueblo of Zuni took place on June 22-23, 1979, with religious leaders from most of the 19 Pueblos, as well as Apache, Navajo and Ute representatives. The Zuni religious leadership, following many hours of internal discussion, attended the proceedings and made statements at the consultation's end. Never before had they participated in such a meeting in their ceremonial positions. Federal representation included the Department of Energy, Tennessee Valley Authority, U.S. Commission on Civil Rights, Forest Service and the Department of the Interior (BIA, BLM, FWS, HCRS and NPS).

In Norman, Oklahoma, June 26-27, 1979, the seventh consulttion was held at the University of Oklahoma, attended by DHEW, DOE, Interior and TVA representatives and by religious leaders of the Arapaho, Cheyenne, Kickapoo, Kiowa, Muscogee and other tribes from Oklahoma, Kansas and Colorado.

The eighth and ninth consultations were held on June 29, in the Reno-Sparks Tribal Building, Reno, Nevada, and June 30 at the Qualla Civic Center, Eastern Band of Cherokee Indians, Qualla Boundary, Cherokee, North Carolina, where Interior and TVA representatives met with local leaders and representatives. And, the final consultation, conducted by the BIA and NPS in Anchorage, Alaska, on July 12, 1979, was attended by Native Alaska people representing state-wide concerns.

Testimony was taken from all persons who wished to make statements, with priority attention given to the Native traditional religious leaders. In some instances, the religious leaders preferred to make no statement or to speak only through representatives. Some religious leaders spoke informally to the federal representatives, but were precluded by tribal customary law from appearing formally in a non-ceremonial capacity. Still others, whose religions carry no such prohibitions, preferred to await the report of the Task Force, in order to ascertain the sincerity of the federal effort. Several of those elders who did make statements spoke in their language, and their transcribed remarks were translated into the English language by persons of their choosing.

Some of the Native religious leaders and practitioners expressed fear that this Act and its implementation would generate a new wave of religious persecution, while most felt that the law would help them in their goal of religious freedom. The Cheyenne Sacred Arrow Keeper, Mr. Edward Red Hat, attended the two days of the consultation in Norman, Oklahoma, stating at its conclusion:

> "I knew it was supposed to help the people, and now I still have my ceremonies. I just got through at the ceremonies here not too long ago, Arrow Ceremony, Sun Dance, and I was sick...but it really helped, and I hear a lot of people here talking. That's real good talk they make....I was thinking all the time, they are getting help....That was the first time I know that people listening about this Indian religion. And I was up in Washington last summer and I made a speech over there, and that's how this religion came up. They passed on it, and I feel good."

The consultation at Zuni Pueblo began with a detailed listing of needs and concerns of the Mescalero Apache religious leaders, succinctly stated by Ms. Bernice Yucos:

> "What I have to put before you, all of you, is the right that the Indian people have to have religion wherever they want and wherever they meet because, to a white people, religion is open to them. Wherever they go, there's a church. There's the Bible; the Bible is open to them in public. And our Indian people are set back; they would not let us go to the mountains...to worship as we want; to the federal land, it's restricted to us. They have restricted us from entering the state and federal lands to get our food and to practice our religious ways.
>
> "There are four mountains that represent the Mescalero Apaches....This is our freedom of religion before the white man came. We are there, praying for our people, not only for our people but for the whole United States so that we have freedom, that there will be no war, that we'll have peace. That's why we have these four mountains and they are all sacred to us.
>
> "And, for food, we need to get in there for mescal, sumacs, berries, and cane from the mosquero. We use that for religious reasons. And for the Indian feathers which are not free to us, we have to steal them to get it and that's not fair. As for the white person, they don't have to steal for their religion; they don't have to fight for their religion. But our Indian people have to fight and that's not fair. We should be free to get our eagle feathers as we wish, as we did a long time ago. We should just keep that.
>
> "And for the plants and paint in basketweaving, we get it from the yucca flowers and to a white man, that's the state flower. We respect the New Mexico State Flower, too, but that was a food a long time before the white man came. We used it for food and for basketmaking. Today, we have to steal it. And for the mosquero, today we have to pay for it; mescal is our food. Among the Apache people, this is our food. It's given to us by our fathers for strength and for our uses. Why are we stopped from that?

"And for the Indian bananas for our people, the Apache people, that's their food, our food. It was long before, we used the bananas. That's our food. Why do we have to go out and steal that? We go out of the reservation, we try to get it. Somebody else holds a gun against us and said, 'That's mine. That's my land. Stay out of it.' And it's inside the federal land and that's not fair. And it's inside the state land and that's not fair.

"And for the White Sands, this is going into the medicine part....We need the sage that we use for our religious medicines. We have to steal that and that's not fair. We have to go behind the bushes to get it and there's other medicines in the federal land that we should get free, as an Indian, because God gave us a different religion. God gave us different medicines to live by, to 'live by' means to help people, our people, to go on. This is our strength. This is our belief. We should keep it. That's the way us Apaches look at it. And there's dirt and rocks that we need to get outside of our reservation, but there's the gun to stop us, against us, too. We need, our people need it. We feel that we should be free to get it.

"And for the cane from the mosquero, we should have the freedom to get that, to use it. We use a lot of that. And that sumac berries, we try to go out and get it. The white people, they don't use it. The other people may use it, but among our Apache people, we use it for the ceremonial purposes, of using it for bringing up our young girls, coming of age. That's what we need, and I want to see that we have the freedom to use that. And the medicine, we should have the freedom to cross the border of New Mexico to get what we want from there instead of being stopped. We should go get it out as free people, like years ago.

"The mesquite beans, we are stopped from getting mesquite beans from the highway people or other federal lands and that's not fair for us. These are our food, for Apache peoples, and we wish that it will go on so that we'll have things that were given to us by God for our people, our Indian people for now getting long and for the purpose of. having freedom in the United States. And this is why I stand before you today, that I hope that you will respect my wishes on behalf of my Mescalero religious leaders."

These consultations, extensive and rich as they were, point to the need for continuing dialogue at the tribal and local level, and to the need for ongoing Congressional oversight. Many problems identified in consultation are under Congressional consideration at present, particularly with regard to Native Hawaiian claims and federal relationship, Alaska Native lands and protection of sacred sites and objects of Native Americans. Other important Native religious freedom issues are before the courts or in varying stages of negotiation. Significant issues in these categories, which are not within the executive forum, are addressed only generally here, although they may have been major topics of discussion during consultation sessions.

The concerns raised throughout the consultation period appear in condensed form in Part III, Recommendations, as statements of issues and examples of identified problems. General concerns expressed by Native traditional religious leaders, agency representatives and others are addressed in Part IV, Conclusion.

III. RECOMMENDATIONS

A. Land

1. Background - Statement of Issues

The attachment of the Native American people to the land is a fact well noted in American history. Treaties, agreements, executive orders and special statutes have provided for a land base for most Indian governments and their citizenry. While the use of the reservation system in this country has successfully accomplished the intended purpose, the rigid application of this same system, over time, has produced an unintended result. Many Native people have been effectively denied access to off-reservation areas used for the gathering of natural products necessary for healing and ceremonial purposes, and access to areas containing sacred sites or holy places revered in Native traditions.

Many of these places are now held by the federal government for a variety of purposes, most of which are compatible with the Native religious use. The accommodation of Native religious uses within federal land management programs must take into account their desire for these lands to remain in their natural state.

The indigenous natural substances of the land are an integral part of the Native religions. Proper gathering of the natural products is essential to ensure their efficacy in later use. The time chosen for the gathering may be determined in a number of ways: 1) the immediacy of the need for a particular substance; 2) the problems of arranging travel to distant places for a specific natural product; and 3) the tribal tradition or the individual's particular belief, which may require a certain period for gathering, often based on the occurrence of the seasons or other natural events, with the time of day prescribed similarly.

The persons who are to engage in the gathering may be subject to specific religious laws regarding their immediate past behavior, and may have undergone preparatory rituals. The presence of others is often controlled because of beliefs that the substance itself may be affected by the proximity, behavior or condition of all persons. Those who are to gather the substance are often required to achieve a proper state of mind prior to entering the physical presence of the natural product to be gathered.

The place of the gathering may be determined by tradition, known availability of the natural product and accessibility, or may involve a ritual search. The gathering may be carried out immediately or it may take place for a long time, depending on the amount needed and the religious instructions governing supply and method of gathering. The amount gathered varies according to the purpose of the gathering: one deer four times a year for certain ceremonies, a small collection of first shoots of a particular plant, a year's supply of clay to make paint, for example.

The Native peoples of this country believe that certain areas of land are holy. These lands may be sacred, for example, because of religious events which occurred there, because they contain specific natural products, because they are the dwelling place or embodiment of spiritual beings, because they surround or contain burial grounds or because they are sites conducive to communicating with spiritual beings. There are specific religious beliefs regarding each sacred site which form the basis for religious laws governing the site. These laws may prescribe, for example, when and for what purposes the site may or must be visited, what ceremonies or rituals may or must take place at the site, what manner of conduct must or must not be observed at the site, who may or may not go to the site and the consequences to the individual, group, clan or tribe if the laws are not observed.

The ceremonies may also require preparatory rituals, purification rites or stages of preparation. Both active participants and observers may need to be readied. Natural substances may need to be gathered. Those who are unprepared or whose behavior or condition may alter the ceremony are often not permitted to attend. The proper spiritual atmosphere must be observed. Structures may need to be built for the ceremony or its preparation. The ceremony itself may be brief or it may last for days. The number of participants may range from one individual to a large group.

Both gathering of substances and ceremonial uses of federal lands are limited by federal laws, regulations and practices, including certain federal procedures deferring to restrictive state laws or practices, particularly in the hunting, fishing and gathering areas. Native religious use has not been specifically included in the purposes for which the land is held by the federal agencies, nor has it been recognized as a use of such land. The American Indian Religious Freedom Act recognizes the need for a type of permanent easement for Native religious gathering and use of the federal lands, which is discussed later in this section.

The accommodation of Native religious use of federal lands has been accomplished in an uneven and arbitrary fashion, often involving arduous litigation or special legislation. Physical access to lands has been denied to Native people because of necessary military considerations, and some federal lands have controlled access because of the purposes for which the land is held, such as primitive and wildlife management areas. Native access is also limited by fire-control regulations.

This controlled access has severely limited the Native religious use, or has placed the Native peoples' use outside the protection of the law. Gathering of natural products or substances on some federal land is controlled by specific statutes. Regulations on other lands allow for waiver of fees and exceptions for personal use, which now may be used for native religious gathering. The leasing of some federal lands effectively prevents the Native religious use of these lands, and especially affects the gathering of natural products, which are often destroyed or damaged by the lessee's use of the land. The gathering of a specific plant or animal may be forbidden or limited by conservation statutes. Prohibitions on the building of structures may limit Native use of ceremonials requiring the building or erecting of arbors and other structures. The condition of jurisdiction, in some cases, may subject the Native religious use to state and territorial laws.

Physical access to the land and its natural products must also include the preservation of the natural conditions which are the sine qua non of that access. The efficacy of the natural products and the spiritual well-being of the sacred sites are dependent upon physical conditions. Changing of physical conditions — the spraying and logging of trees, unlimited trapping or removal of original species, alteration of the terrain through river channelization, dams and other methods — not only damages the spiritual nature of the land, but may also endanger the well-being of the Native religious practitioners in their role and religious obligation as guardians and preservers of the natural character of specific land areas.

Preservation of the natural character of the land is often made needlessly difficult through such management practices as chaining to remove natural trees, failure to prevent overgrazing during dry periods and overlooking of sources of non-point source water pollution. These practices endanger the natural supply of the substances required by the Native religions, and may damage the character of land areas which are extremely sensitive to the actions and consequences of modern life.

Inadequate control of tourism threatens the offerings left at sacred sites and gathering areas. Often, easements across Native lands are granted to the general public without regard to their impact upon sacred sites and the privacy of Native religious practitioners. Vandalism at holy places, especially burial sites and ruins, endangers their very existence. Rituals which require differing forms of privacy have been covertly observed, interrupted and affected through the presence and activities of unauthorized observers. The privacy needed for rituals varies from tribe to tribe, ranging from the exclusion of certain members of the group from plant-gathering and other rites to the exclusion of all non-participants for the duration of the ceremony. All restrictions are designed to assure that the rituals and ceremonies are conducted, performed and observed, without interruption and in accordance with Native American religious laws.

The following section discusses problem areas encountered in the Native religious use of federal lands. (A tabular presentation of problems identified in consultations appears in Appendix C.) Section 3 contains statutory authorities for actions taken and to be taken by the federal entities in implementing the United States policy of preserving and protecting the Native traditional religions. Section 4 delineates the Task Force recommendations for uniform administrative procedure pursuant to the American Indian Religious Freedom Act and recommends statutory change in federal land laws necessary to adequately administer the American Indian Religious Freedom Act.

2. Identification of Problems - Response

During the period of consultation, many problems encountered in the Native religious use of federal lands were called to the attention of the Task Force. Several of the identified problems are being addressed by the appropriate agencies and, although resolution may not have been reached by the time of writing, dialogue and the search for settlement continues in each problem and policy area.

Many of these problems are in litigation or before the Congress at present, as noted in the tables in Appendix C. Some of the problems were addressed by the appropriate agencies prior to enactment of P.L. 95-341. As part of the continuing evaluation process, some of these problem areas may be examined in light of the policy commitment to the religious freedom of Native Americans. It is important to note here that certain problems result from adverse policies of the distant past and may defy resolution, particularly where irrevocable physical change has rendered the subject lands inaccessible.

Several specific problems have been resolved by mutual agreement between the affected agency and Indian tribe or Native group; several general problems affecting more than one tribe or Native group have been addressed by policy determinations within an agency. The following examples indicate the variety of agency approaches to resolution of identified problems.

Coso Hot Springs - The Department of the Navy has entered into an access agreement with the Owens Valley Paiute and Shoshone Band of Indians, providing for the Indian religious use of the medicinal muds and waters of the area. The Coso Hot Springs figure prominently in the Indian religious history of this area as a sacred place for spiritual and physical renewal and curing.

The Department of Navy acquired the Coso Hot Springs and surrounding lands following World War II, whereupon the China Lake Naval Weapons Center was established. Because of its use as ammunitions storage site, certain security restrictions were placed on its public use and access, including a prohibition against overnight and extended visits, bathing in the springs and entry without an escort.

Following a year-long dialogue regarding national security needs and tribal religious needs, the Department of Navy agreed to lift certain prohibitions on the duration of visits and authorized activities to allow for the tribal religious use of Coso Hot Springs. In a Memorandum of Understanding, the parties agreed that: the weekend and other visits will not interfere with the Navy mission; the scheduled visits are reserved exclusively for members of the Owens Valley Pauite-Shoshone Band of Indians and/or the Kern Valley Indian Community, with other requests for visits determined on a case by case basis; and medicine men who are visiting these tribes are also covered by the agreement. The Prayer Site, Coso Hot Springs, the old resort of the same name and a designated overnight camping area constitute the agreement area.

The agreement recognizes the provisions of P.L. 95-341 and may be reviewed at the request of either party following the submission of the President's evaluation to the Congress. All parties agree to scrupulously adhere to the Historic Preservation Act and to diligently pursue a preservation and management plan for the Coso Hot Springs National Register of Historic Places site. The tribal people agree that the springs and pond must not be permanently disturbed, and that they assume all risks associated with the hot springs area. Finally, the Navy will provide an escort who, upon request during any ceremony, shall withdraw to a discrete distance and shall not intrude on traditional rites.

Allocation of Buffalo on Federal Lands - The problem of the lack of access to buffalo on federal lands received prominent mention throughout the consultation period by traditional Indian people whose religions are based on or involve the American bison. These Indian tribes and people utilize every part of the buffalo, although the significance and need for a particular part of the animal varies from tribe to tribe and religion to religion. Certain Indian religions need buffalo meat for ceremonial feasts, while some ceremonies require the presence of a live buffalo among the participants. In other religions, certain ceremonies cannot begin until the participants have eaten buffalo tongue, and some cannot continue unless a buffalo skull is available. Tribal religious elders also spoke of the "spiritual sickness" which occurs when their people are unable to see and live near buffalo.

Under the federal conservation program, the American bison has made so spectacular a recovery from its previously diminished state that the herds on National Wildlife Refuge lands are thinned periodically and the excess buffalo sold under the lottery system. The Fish and Wildlife Service, in response to the Indian religious need, is developing a policy which will make available a percentage of the excess buffalo for Indian religious purposes. The buffalo will be made available at the fall roundup. This allocation policy, including provisions for methods of taking, will be developed and implemented in continuing consultation with Indian traditional religious leaders.

California Desert Conservation Plan - An excellent example of a federal agency working in close consultation with American Indians to achieve a mutually desirable goal is found in the California Desert Conservation Plan (CDCP). Established by the Federal Land Policy and Management Act, the CDCP is designed to protect the California Desert environment - including lands in Arizona and Nevada - and its cultural, archaeological and historical resources and sites.

In implementing this Plan, the Desert Planning Staff of the Bureau of Land Management (BLM) has initiated an inventory of Native American areas of concern. Their findings indicate that more than twenty tribes and Indian groups have sacred sites located in the CDCP area. In ascertaining the locations and significance of these sites, the Staff ethnologist has worked closely with tribal elders, religious leaders and councils. In many instances, sites of significance were revealed only after the Indians were informed of the protectionist intent of the project and assured that no site-specific public disclosure would be made. Under BLM staff policy, only those areas previously known to the public can be identified publicly. These include Pilot Knob, Intaglio, Coachilla Valley, Saline Valley and Panamint Mountains, which are village sites and burial grounds presently threatened by urban encroachment. Other protected areas include those used for the gathering of plants and herbs used for nutritional, spiritual and medicinal purposes.

After an evaluation of the multidisciplinary study, the BLM hopes to develop an innovative approach to the management and protection of these designated areas, involving arrangements for the affected tribes and BLM to share the responsibility in achieving their mutual goal of preserving these sacred areas. Actively seeking the cooperation of Indian tribes in ascertaining what areas are of socio-cultural and religious significance to them,and the BLM efforts to preserve and protect those sites for Indian use, is without precedent.

The lifestyle and heritage of the Native American groups in the area demonstrates a relationship with the desert of tremendous time and depth, and these lands and resources are a necessary part of an ongoing traditional lifestyle. This initial step by the BLM toward identifying Native American values and concerns in the California Desert will ensure their participation in the long-range management of the area.

3. Statutory Authorities for Administrative Action

a. This section contains existing statutory authorities for actions taken and to be taken by the federal entities in implementing the United States policy of preserving and protecting the Native traditional religions. The following statutes provide authority for federal land use planning, management and regulation in terms broad enough to require or permit the consideration of Native religious practices:

i. Bureau of Land Management

43 USC 2 (general authority in Secretary of Interior to administer public lands)

43 USC 1739(a) (authority in Secretary of Interior to establish advisory councils with members who represent major citizen interests in land use planning and management)

43 USC 1739(e) (requires public participation in public lands planning and management)

43 USC 1701(a)(8) (Federal Land Policy and Management Act, policy includes protection of the quality of historical, ecological and archaeological values)

43 USC 1702(c) (definition section includes natural science and historical values in multiple use)

43 USC 1761(a)(7) (authorizes rights of way)

43 USC 1763 (authorizes right of way corridors)

ii. Public Lands

43 USC 1732 (multiple use-sustained yield management policy; Secretarial authority to regulate use, occupancy and development of public lands through easements, permits, leases, licenses and rules and to take other action necessary to prevent degradation)

43 USC 1712(f) (requires provision for public involvement in formulation of public lands plans and programs)

43 USC 1714 (Secretarial authority to make land withdrawals under certain procedures)

vi. Fish and Wildlife Service

16 USC 668dd Wildlife Refuge System (prohibits destruction, disturbance of natural growth and taking of fish and wildlife, authorizes Secretary to restrict land uses, hunting and fishing to allow compatible use and access)

vii. Department of Defense

10 USC 2668 (authorizes the Secretary of a military department to grant easements on military lands for any purpose "he considers advisable")

10 USC 2671(d) (grant of wildlife jurisdiction to states does not modify Indian rights granted "by treaty or otherwise")

viii. Department of the Interior

31 USC 483(a) Alaska Native Claim Settlement Act (free permits for activities on federal lands)

b. In addition to the statutes listed above, the following statutes provide authority for protection of areas or natural resources important to Native religious practices:

i. Department of Transportation

49 USC 1651(b)(1) (requires special effort by DOT to preserve natural beauty of park, recreation, wildlife, waterfowl and historic areas)

ii. Office of Surface Mining

30 USC 1201 et seq. (protection of Indian and non-Indian lands from adverse environmental effects of surface mining)

iii. Department of Defense

16 USC 670a (authority for cooperative Defense-Interior program to develop wildlife, fish and game conservation and rehabilitation on military reservations)

92 Stat. 921 (substantially increases the amount of money available to Defense and Interior for conservation and rehabilitation of wildlife on military lands)

iv. Wild and Scenic Rivers

16 USC 1284 (Secretarial authority to limit hunting)

v. Wilderness Preservation System

16 USC 1131 (provides for establishment of wilderness system to protect wilderness character of designated areas)

16 USC 1133(c) (prohibition of or limits on commercial enterprises, roads, motor vehicles in wilderness areas

vi. National Environmental Policy Act

42 USC 4321 et seq. (encourages harmony between humans and environment; requires environmental impact statements for major federal action significantly affecting the environment)

vii. Mining on Federal Lands

30 USC 183 (cancellation of mining permits for failure to comply with permit conditions)

viii. Geological Survey

43 USC 31a (control of mineral leasing through land classification)

ix. Tennessee Valley Authority

43 USC 831u (authorizes planning for natural resource conservation)

4. Task Force Recommendations for Uniform Administrative Procedure

The Task Force recommends a number of administrative actions that can be taken to solve some of the problems experienced by Native Americans in this area. First, each federal agency can accommodate Native American religious practices to the fullest extent possible under existing federal land and resource management statutes. This accommodation could be reflected in each agency's regulations, policies and enforcement procedures with regard to access to federal land areas, gathering and use of natural substances endowed with sacred significance by Native American religious groups, provisions for group and individual activities on federal lands and any other appropriate subject matter.

Each federal agency can also revise existing regulations, policies and practices to provide for separate consideration of any Native American religious concerns prior to making any decision regarding use of federal lands and resources.

The appointment of American Indians, Alaska Natives and Native Hawaiians to existing boards, commissions and other citizen advisory groups affecting federal land and resource planning, management and practices should be considered by federal agencies. Each federal agency could determine whether it would be appropriate to create new boards, commissions and other citizen advisory groups designed specifically to assure adequate consideration of Native religious concerns in federal land and resource planning, management and practices.

To the fullest extent allowed under existing statutory authority, each federal agency can reserve and protect federal areas of special religious significance to Native Americans in a manner similar to its reservation and protection of areas of special scientific significance. They can also provide exemptions from restrictions on access to and gathering, use and possession of federal property for Native American religious purposes similar to those provided for scientific purposes.

Finally, whenever any federal agency cedes jurisdiction for any purpose to a state, it can reserve federal jurisdiction over Native American land and resources use by Native Americans for religious purposes.

5. Recommendation for Congressional Consideration

The Task Force has developed a number of recommendations for Congressional consideration in this area. These recommendations are currently being reviewed within the Administration. They concern federal land-use designation for areas containing sacred sites or shrines of the Native traditional religions, and site-specific federal land statutes which do not allow for Native religious use of federal property or federal land. The Task Force is also concerned about protecting information concerning sensitive Native religious matters and sacred sites given to land-managing agencies, similar to the provisions of 16 USC 470a(4). The enactment of S.490 or H.R.1825 is urged as both bills contain provisions for confidentiality with respect to these sites.

III. Recommendations

B. Land - Cemeteries

1. Background - Statement of Issues

Native American religions, along with most other religions, provide standards for the care and treatment of cemeteries and human remains. Tribal customary laws generally include standards of conduct for the care and treatment of all cemeteries encountered and human remains uncovered, as well as for the burial sites and bodies of their own ancestors. Grounded in Native American religious beliefs, these laws may, for example, require the performance of certain types of rituals at the burial site, specify who may visit the site or prescribe the proper disposition of burial offerings.

The prevalent view in the society of applicable disciplines is that Native American human remains are public property and artifacts for study, display and cultural investment. It is understandable that this view is in conflict with an repugnant to those Native people whose ancestors and near relatives are considered the property at issue. Most Native American religious beliefs dictate that burial sites once completed are not to be disturbed or displaced, except by natural occurrence.

Access to burial sites on federal lands is necessary for practitioners of those Native American religions which require the performance of ceremonies at these burial sites. (The issue of access to federal lands is treated in the preceeding section.) Access to these burial sites is necessary in order to continue the use of the site as a burial ground for those Native Americans whose religions require burials at these sites.

The disturbance of Native American burial sites on federal lands may be purposeful or inadvertent. Purposeful disturbances include authorized archaeological and educational use of the site, as well as illegal abuse, pillage and vandalism of the site. Inadvertent displacements usually occur when federal roads, dams or other construction projects proceed in the absence of adequate site surveys and without consulting the affected Native Americans. Therefore, most existing protection is contained in administrative operating policies.

The next section identifies specific problems in this area, followed by a listing of existing statutory authorities for federal actions. (A listing of specific problems identified during the consultation period appears in Appendix C.)

2. Identification of Problems - Response

Although such statutes as the Antiquities Act of 1906 exist to protect and preserve the cultural property of the United States, these laws carry only minor penalties and have been successfully challenged in litigation and severe limitations placed on their enforcement.

It is the policy of Interagency Archeological Services, the major federal agency involved in the disturbance of human remains by federal construction, to require field officers to consult with relatives or tribal governments, in those cases where remains can be identified. A similar policy is now enforced by some Army Corps of Engineers offices, the Bureau of Land Management and the Tennessee Valley Authority.

The Bureau of Land Management (BLM), in response to P.L. 95-341, is reviewing its policies and procedures pertaining to the issuance of Antiquity Act permits for archeological work on BLM-administered land. Antiquity Act permits are issued by the Departmental Consulting Archeologist (DCA) in the Office of Archeology and Historic Preservation of the Heritage Conservation and Recreation Service. However, the BLM has the responsibility for processing and evaluating permit applications that involve actions on BLM-administered land and for providing recommendations to the DCA regarding such applications.

The BLM has developed draft procedures for processing and evaluating Antiquity Act permit applications, most of which are already in effect. For example, before an application for research excavation on BLM-administered land can be evaluated, an Environmental Analysis Record (EAR) must be conducted in order to ascertain the effect of the action (i.e., issuance of an Antiquity Act permit) on all values and resources in the area of work. Included in the analysis is a consideration of socio-cultural impacts on Native American religious values.

In addition to providing Native American input during the EAR process, the BLM is encouraging Antiquity Act permit applicants to consult with local Native American religious/tribal/group leaders prior to submittal of an application for archeological research. In this way, Native American concerns can be identified early in the process of determining whether to grant an application.

Included in the BLM draft Antiquity Permit procedures is a stipulation concerning human burials which would be attached to any permit issued for archeological investigations on BLM-administered land. If human burials are encountered during excavation, all work must stop in the immediate area and the responsible BLM officer must be notified. Appropriate parties must be contacted and consulted, including local Native Americans, the State Historic Preservation Officer, and the county coroner. Recommendations as to how best to proceed would be based on this consultation process.

3. Statutory Authority for Administrative Action

Statutes under which Native American burial sites on federal land may be protected:

16 USC 431-433 (requires permits for archeological excavations on federal lands)

16 USC 461, et seq. (provides for the preservation of historic sites)

16 USC 469, et seq. (provides for preservation of archaeological data subject to flooding by dam construction)

16 USC 470, et seq. (expands federal role in historic preservation)

18 USC 641 (theft of government property)

18 USC 1163 (federal penalties for theft of tribal property)

18 USC 1361 (destruction of government property)

23 USC 138 (Secretary of Transportation authorized to plan in order to minimize harm to land of historic significance)

42 USC 4321, et seq. (NEPA - federal responsibility to preserve historic and cultural aspects of national heritage)

4. Recommendation for Congressional Consideration

In order to fully implement the policies expressed in 42 USC 1996, the Task Force has developed legislative recommendations concerning burial sites on federal land and protection of those sites. Those recommendations are currently under review within the Administration.

III. RECOMMENDATIONS

C. Sacred Objects

1. Background - Statement of Issues

Native traditional religions are based on the natural environment. Their practitioners rely on natural substances for their religious observances. Certain wildlife, plants and minerals - which may be worn, carried or simply present - are considered sacred and fundamental to the religious and ceremonial life.

The sacred objects of a ceremony or religion may be, for example, the salmon, eagle, buffalo, kit fox, hawk, shark, snake, deer, moose, elk, squirrel, turtle, bowhead or butterfly. Some religions or ceremonies may hold venerable claws, feathers, beaks, tusks, hides, fangs or quills; while particular plants - such as sage, tobacco, mescal, yucca, sweet grass, cedar, peyote - are central to others. Drums, arrows, masks, prayer feathers, pipes, totems, medicine bundles and other objects made from natural materials are held sacred in certain Native religions. Natural products may be roots or rocks, berries, gourds, leaves, shells or turquoise - they may be consumed, buried, held, carried or observed, and are commonly used for healing, purification or visions, according to religious customary law.

2. Identification of Problems - Response

In recent times, many animals, plants and mineral materials have not been available for use in Native American religions. Non-Native settlement of the country and the introduction of non-indigenous species inevitably led to a great reduction of the natural animal and plant species. Most notable was the almost complete annihilation of the buffalo, once extensively used in the religions of the Plains Indians.

This scarcity of natural substances used in Native American religions was exacerbated by large federal construction projects which greatly affected wildlife habitats and rendered inaccessible many deposits of mineral substances.

Prior to this century, many American Indian tribes and Native Hawaiian groups were removed by federal action to areas away from their traditional homelands, often far from fishing, gathering and hunting grounds. Time and distance have not diminished the need of many Native religious practitioners and leaders to return periodically to these places. While some tribal religions and geographical situations allow for the substitution of comparable materials, most do not. Despite great difficulty involved in these journeys, many religious leaders and practitioners travel to their traditional places to gather materials necessary for religious purposes. Once the journey is made, some are unable to gather the needed materials because of regulatory provisions or administrative procedures. For those Native people who are precluded from travel or from gathering, the continued practice of their deeply held religious beliefs becomes almost an impossibility.

In an effort to preserve the natural species of the country, conservation laws were passed. Because Native religious use of these species was taken into account only in the Bald Eagle Protection Act, these laws have not remedied problems in obtaining these species for Native religious use. Objections have been raised regarding existing administrative procedures under the Bald Eagle Protection Act. These procedures are being revised now by the Fish and Wildlife Service, in consultation with Native religious and tribal leaders.

The Fish and Wildlife Service (FWS) is also responding to a Native religious need in a related area. During the Task Force consultation in Oklahoma, traditional Muscogee leaders spoke of the need to take squirrel for ceremonial feasts throughout the year. Leaders of the Kickapoo also spoke of their need for 32 deer each year for religious purposes. The religious ceremonial need arises year-round, and only coincidentally with the Oklahoma hunting season. Similar situations were addressed by other tribal leaders in consultations throughout the country. As a matter of policy rather than statutory obligation, the FWS honors the applicable state fish and game regulations on federal lands under its control. The FWS recognizes that state regulations developed prior to enactment of P.L. 95-341 may not have taken these unique needs into account at time of promulgation, and that they do not meet these expressed needs at present. The FWS is now addressing these concerns.

Many Native Americans are unaware of present statutory and regulatory provisions allowing for the gathering of animals, plants and mineral substances on federal lands. For instance, fee waivers and use permits for most of such taking are allowed under existing statutory authorities, as outlined in the previous section dealing with federal lands. To lessen the problem of lack of information in the Native and tribal communities and reservations, the Interior Assistant Secretary for Indian Affairs will undertake a vigorous effort to disseminate relevant information nationwide. This effort will be coordinated with the appropriate federal agencies.

Native American religious use of peyote, allowed under the statutory authority of the Administrator of the Drug Enforcement Administration, is needlessly complicated through the use of the distribution system under Texas regulations. Although American Indians only are permitted to use peyote for religious purposes, only non-Indians are the authorized distributors. Further complications arise in the use of forms ill-suited to the needs of many of those who use peyote in religious ceremonies.

Increasing difficulties in obtaining peyote for religious use may be relieved administratively by allowing traditional Indian religious harvesting of peyote on federal lands in the Southwest and allowing the importation of peyote from Mexico for Native religious use. The Drug Enforcement Administration will continue to consult with practitioners of traditional peyote religions and the Native American Church on this issue.

Appendix C contains a tabular presentation of examples of problems identified by practitioners of Native religions in obtaining, possessing and using the animal, plant and mineral material necessary for religious use. Statutory authorities and applicable Task Force recommendations for uniform administrative procedure are then stated.

3. Statutory Authorities for Administrative Actions

Statutes authorizing or permitting the use of plants, animals and mineral materials by practitioners of Native American religions:

16 USC 668a (Native American religious use of eagles permitted.)

16 USC 1371(b) (Marine Mammal Protection Act, provision for Alaska Native subsistence use which may be applied to religious use.)

16 USC 1539(e)(1) (Endangered Species Act, provision for Alaska Native subsistence use which may be applied to religious use.)

16 USC 704 (Migratory Bird Treaty Act, provision allowing Secretarial determination for taking, killing and possession.)

21 USC 952, 953 (Allows importation and exportation of peyote, a controlled substance, at discretion of Attorney General for lawful purposes.)

30 USC 601 (Authorizes Secretaries of Interior and Agriculture to dispose of mineral materials on public lands.)

16 USC 668dd(d) (National Wildlife Refuge System, Secretarial interpretation that traditional Native religious uses, such as gathering of herbs and plants, are compatible with the major purposes of most refuges.)

4. Task Force Recommendations for Uniform Administrative Procedures

To further enable Native Americans to gather and use sacred objects, it is the recommendation of the Task Force that the Secretaries of Interior, Agriculture, Commerce and Treasury should establish a joint uniform set of administrative procedures to govern the disposition of surplus wildlife and plants or parts thereof which have been confiscated or gathered under the jurisdiction and control of the respective Secretaries. To the fullest extent allowed under existing statutory authority, the uniform procedures should be designed to increase the availability of natural products to Native American practitioners of Native traditional religions.

5. Recommendations for Congressional Consideration

The fifth, sixth, seventh and ninth whereas clauses of the Joint Resolution on American Indian Religious Freedom address the conservation laws as they relate to the Native American religious use and possession of sacred objects protected by statute:

* * *

> Whereas the lack of a clear, comprehensive, and consistent Federal policy has often resulted in the abridgment of religious freedom for traditional American Indians;
>
> Whereas such religious infringements result from the lack of knowledge or the insensitive and inflexible enforcement of Federal policies and regulations premised on a variety of laws;
>
> Whereas such laws were designed for such worthwhile purposes as conservation and preservation of natural species and resources but were never intended to relate to Indian religious practices and, therefore, were passed without consideration of their effect on traditional American Indian religions;
>
> Whereas such laws at times prohibit the use and possession of sacred objects necessary to the exercise of religious rites and ceremonies ...
>
> Resolved ... henceforth shall it be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to ... use and possession of sacred objects.

* * *

This policy indicates that administrative accommodations regarding Native religious use of the protected environment are now permissible under 42 USC 1996 and the discretionary authority of the Secretary of the Interior. The guiding principle for the nature and extent of any accommodation would be the preservation of the threatened species. Therefore, no specific recommendation is made at this time regarding any conservation law the Congress may consider in the future.

III. RECOMMENDATIONS

D. Sacred Objects - Border Crossings

1. Background - Statement of Issues

North American Indians, Eskimos and Polynesians travelled and traded freely throughout the western hemisphere prior to the arrival of the Europeans. Much of the trade which was developed involved raw materials for use in making articles such as tools, jewelry, baskets and clothes. Many of these items were used for religious purposes. There was also a steady trade in items purely for religious use, including medicinal and spiritual herbs from each area. These items varied from Central American parrot feathers for use in Pueblo ceremonies to abalone shells from the west coast used in the central plains.

When the boundary lines for the present countries were drawn, not only were many tribal groups divided, but much of the indigenous trade was curtailed. Crossings were restricted as the borders were surveyed and Customs Service facilities built. Sacred objects were sometimes searched, resulting in the impairment of their spiritual qualities. Confusion and misunderstandings about duties on the part of Native Americans, together with the border officials' lack of knowledge of Native American religious practices, led to confiscations of sacred objects, plants, feathers and animal parts.

2. Identification of Problems - Response

On September 15, 1978, the Commissioner of Customs issued a policy statement entitled "Policy to Protect and Preserve American Indian Religious Freedom" (which appears in Appendix B, Customs Service). The Commissioner's statement instructs Customs officials to institute measures to assure sensitive treatment in the course of Customs examinations of the articles used by American Indians in the exercise of their religious and cultural beliefs.

Prior to approval of the American Indian Religious Freedom Act, the Commissioner of Customs established a Committee on Indian Affairs composed of district directors from each of the geographic areas where border problems are presented. This committee has held several regional meetings with Native Americans to discuss specific problems so that they might be resolved at the local level. The communication links established through these meetings have resulted in a continuing dialogue to bring specific problems to the attention of appropriate officials.

An additional problem encountered in this area is the illicit sale and theft of Native sacred objects, resulting in the sale or resale of these objects abroad. Many sacred objects are owned by the tribal or Native group, with physical custody transferred to successive tribal citizenry or group members.

The Customs Service Indian Affairs Committee has met with tribal representatives in various parts of the country, in an effort to determine specific problem areas where, perhaps due to a lack of knowledge or unawareness of Native American beliefs or customs, Customs officers may be handling sacred objects in an insensitive manner. At one of these meetings, a representative of the Yaqui Tribe identified a problem arising in connection with the importation from Mexico of sacred masks and other paraphernalia, which could be mistaken for commercial importations and thus handled in a manner which would not be proper for sacred objects.

In order to assist Customs officers in identifying the sacred Yaqui objects, the Tribe permitted Customs to photograph the sacred objects and the ceremonies in which they were used. The photographs were then reviewed by tribal elders and selected ones were assembled into a booklet with explanatory material. This booklet will be distributed to Customs officers at the appropriate ports of entry to assist them in idetifying the sacred objects, so that they might be treated by Customs officers with due respect and sensitivity.

In addition to the problems involving transportation of sacred objects across international borders, the Customs Service Indian Affairs Committee also requested input from Native Americans regarding other problems with Customs. During the two meetings along the Canadian border, the Northeastern tribes and, to a lesser extent, the Blackfeet/Blood Tribes expressed great concern regarding a diminution of the privileges their tribes had under the Jay Treaty to free passage regardless of citizenship and to the duty-free entry of their usual goods and effects. Recent court decisions have held that these provisions were abrogated by the War of 1812. Although domestic legislation continued the privilege until the 1890s, such provision was repealed in 1897.

Indian representatives have requested Customs assistance in drafting legislation to reaffirm these privileges, also requesting that the duty-free privilege be extended to household appliances which are purchased in one country and brought onto the reservation in the other country for the sole use of the purchaser. In addition, several tribal representatives suggested legislation which would treat Indian tribes as developing nations to enable handicrafts to be imported free of duty under GSP-Generalized System of Preferences provisions. Canada would have to enact similar legislation for the Indians to achieve their stated goals. Representatives of Canadian Customs were present at the meeting where the duty-free subject was discussed and indicated that a revision of the Indian laws was under study and the Indians should make their wishes known to the Canadian Parliament.

Appendix C contains a tabular presentation of some of the customs problems faced by practitioners of Native American religions.

3. Task Force Recommendations for Uniform Administrative Procedure

It is the recommendation of the Task Force that, when crossing the borders of the United States, Native Americans carrying articles for use in the Native traditional religions should be treated with respect and dignity and, to the extent permitted under existing statutory authority, according to their own religious laws. It is also recommended that, insofar as is possible, the United States Customs Service should assist Native Americans with problems encountered with counterpart agencies of other countries in regard to Native religious practices.

4. Recommendation for Congressional Consideration

The Task Force has developed legislative recommendations concerning the tariff schedule of the United States, the export by non-Native Americans of sacred objects, and the Jay Treaty. Those recommendations are currently being reviewed within the Administration.

III. RECOMMENDATIONS

B. Sacred Objects - Museums

1. Background - Statement of Issues

Equally elaborate concepts of personal property have developed in both Native American and western legal traditions. The problems presented by the presence of Native American sacred objects in museums will be resolved only through careful determinations of what constitutes essential fairness in these conflicts between culturally distinct systems.

Sacred objects and their proper care and treatment vary from tribe to tribe. Some sacred objects are wrapped bundles containing hundreds of articles, others are distinctly shaped rocks or carefully prepared ceremonial clothing. The care of the sacred object may involve, for example, a simple ritual before or after its use, periodic offerings of tobacco or cedar, or intricate restrictions upon what actions are allowed in the physical presence of the object.

Often the Native American equivalent of legal ownership is reserved in the tribe or group as a whole and the interest of the individual owner or keeper resembles physical custody. This is especially evident of those sacred objects used in ceremonies participated in by the tribe or group as a whole. It is also evident of those sacred objects whose use is an integral component of a tribal ceremonial cycle. In most cases, Native Americans never envisioned any separation of these objects from the tribe or group.

Many sacred objects exist, and the proper care, treatment and disposition of each object is contained in the tribal customary laws. Classification of sacred objects by type is best done according to each tribe's particular distinctions, but under most systems it seems probable that the vast majority of items in museums are not of current significance in the practice of the Native religion. Significant items may vary widely but will most probably include:

1) Sacred objects which serve a continuing religious function, for example, objects whose presence serves as a guard or protection for land;

2) Sacred objects whose proper disposition according to tribal customary law was disturbed, for example, sun dance offerings, which are properly supposed to be allowed to disintegrate;

3) Sacred objects which were illegally "converted" under tribal customary law, for example, some pipe bundles are not to be transferred outside of the family, group or tribe.

The consequences to the tribe or group of the absence or mistreatment of a particular object may be such that the free exercise of the Native religion is severely restricted. Each case presented by practitioners of Native American religions seeking proper treatment or return of sacred objects must be considered with proper understanding and circumspection.

2. Identification of Problems - Response

The problems experienced by Native Americans in the use and possession of sacred objects which are controlled by federal and public museums are best examined within the context of acquisition methods and related laws and regulations.

Museum accession records show that some sacred objects were sold by their original Native owner or owners. In many instances, however, the chain of title does not lead to the original owners. Some religious property left original ownership during military confrontations, was included in the spoils of war and eventually fell to the control of museums. Also in times past, sacred objects were lost by Native owners as a result of less violent pressures exerted by federally-sponsored missionaries and Indian agents.

Most sacred objects were stolen from their original Native owners. In other cases, religious property was converted and sold by Native people who did not have ownership or title to the sacred object.

Today in many parts of the country, it is common for "pot hunters" to enter Indian and public lands for the purpose of illegally expropriating sacred objects. Interstate trafficking in and exporting of such property flourishes, with some of these sacred objects eventually entering into the possession of museums.

Many sacred objects are taken from Native graves located on Indian and public lands and donated to museums by persons possessing federal permits under 16 USC 432. By statute, all such gathering is undertaken for permanent preservation in public museums. No provision exists in 16 USC 432 and 43 CFR Part 3 for Native use and possession of sacred objects taken in this manner. (Problems related to the protection of Native sacred sites and cemeteries are contained in Part C of this Report.)

Once museums obtain possession of sacred objects, Native Americans have little legal ground for recovery for religious use. For the most part, the museums have ignored the requests of numerous tribes and Native religious groups for return of their sacred objects. One recent exception is the Denver Art Museum's return to the Zuni bow priests of a war god (a hayuta), which was stolen from them and later donated to the museum. At present, the Pueblo of Zuni is negotiating with the Smithsonian Institution for the return of another war god. While there have been other returns - kiva masks to Hopi elders by the Heard Museum, and the 1977 Wheelwright Museum return of 11 medicine bundles to Navajo medicine men - these examples are the exception.

Many problems related to museum possession of Native sacred objects are based upon the manner of display, handling, care and treatment of the objects. Many of the tribal and/or religious groups wish the return of their objects, while others may wish only to work with museums to assure against desecration of the objects.

The museums of the Departments of the Army, Navy and Air Force are presently reviewing their holdings for any object that may be of religious significance to practitioners of Native American traditional religions. Should any such objects be identified, the appropriate Native religious leaders will be notified and invited to discuss its return, long-term loan and/or care and handling.

The Institute of Museum Services (IMS-DHEW), which funds private museums and institutions, has suggested that a survey be conducted to determine the extent of museum holdings nationwide that would be claimed by Native American religious leaders. IMS proposes that the assessment should be conducted in light of the following issues: legality of claim to specific artifacts; method of resolving conflicting claims; and the consequences of establishing a precedent of returning a part of museum collections to the original owners.

An excellent example of federal/tribal/institutional cooperation on the removal and disposition of tribal heritage material can be found in the Ozette Archaeological Project. When an important archaeological site was discovered on the Makah Indian Reservation on the Washington coast, the Makah people were divided on the issue of permitting excavation. Tribal members were eager to learn more about their tribal history but feared the religious implications of the disturbance of this ancient site.

The Makah Tribal Council and Washington State University professors worked out an agreement to ensure that the sanctity of the site would be protected, that the participation of the Tribe in decisions regarding the project would be guaranteed and that the artifacts and other materials would remain in the possession of the Tribe.

To honor the agreement's final provision, the Tribe and University worked together to solicit funds for a major museum on the Makah Reservation. The museum building was funded by the Environmental Protection Agency. The National Endowment for the Arts and the Crown Zellerbach Foundation contributed funds for the displays, and the National Endowment for the Humanities funded a language program which is run through the museum.

The project was conducted with respect for the Makah traditional beliefs and needs, to the benefit of all participants. The Makah Museum, which opened on June 2, 1979, provides housing for the artifacts and jobs for the people. The Makah people have learned more about their past from this unique site and have the tangible evidence of their rich heritage.

3. Statutory Authorities for Administrative Action

a. The following statutes provide authority to prohibit the removal of Native traditional sacred objects from Native American possession and from public and Indian lands, and to assure Native use and possession of sacred objects necessary for the exercise of traditional rites and ceremonies:

i. 16 USC 433 (prohibits excavation and removal of any objects of antiquity located on lands owned or controlled by the United States government)

ii. 16 USC 432 (requires federal permits for excavation and removal of antiquities located on lands owned or controlled by the United States under uniform administrative rules)

iii. 18 USC 1163 (a criminal offense to steal or possess stolen property belonging to any Indian tribal organization)

b. The following statutory authorities empower federal funding authorities to protect Native religious freedom against infringement by museums which receive federal funds.

i. 42 USC 2000a (all persons shall enjoy full and equal enjoyment of facilities, privileges and advantages in any place of public accommodation or place of exhibition or entertainment without being discriminated against on religious grounds)

ii. 42 USC 2000d (no person may be denied the benefits of or be subjected to discrimination under any program or activity receiving federal funds)

iii. 42 USC 2000d-1 (requires all federal departments and agencies which are empowered to make federal grants to effectuate 2000d by rules, regulations and orders, which may be enforced by the termination of or refusal to grant federal funds)

iv. 20 USC 965 (empowers the Director of the Institute of Museum Services to make federal grants to museums)

v. 20 USC 954(g) 956)c) (empowers the National Foundations of the Arts and Humanities to grant federal financial assistance to museums)

vi. 20 USC 65a(a) (authorizes the Director of the National Museum under the direction of the Secretary of the Smithsonian Institution to provide federal financial and other assistance to museums and educational institutions)

4. Task Force Recommendations for Uniform Administrative Procedure

The Task Force recommends a number of administrative actions that can be taken to solve some of the problems experienced by Native Americans in this area:

a. Federal museums should decline to acquire for their collections objects known to be of current religious significance to American Indian, Aleut, Eskimo or Native Hawaiian traditional religions, and should inform such Native American tribal and religious leaders of the presence on the market or in non-Native hands of such objects as come to their attention.

b. Federal museums should return to the tribe of origin objects in the museum's possession, as to which unconsenting third parties assert no ownership interest, that were used or valued for religious purposes at the time of their loss from an American Indian tribe or Native American community, and were alienated from that community contrary to standards for disposition of such objects then prevailing in that community, provided that the successor or modern tribe or community requests them as needed for current religious practice.

c. Federal museums should consult traditional Native religious leaders for guidance as to the museums' practices regarding exhibition and labeling, conservation, and storage of Indian, Eskimo, Aleut and Hawaiian sacred objects in their possession.

d. Federal museums should facilitate periodic ritual treatment by appropriate religious practitioners of sacred objects in their possession, at the request of such practitioners.

5. Recommendations for Congressional Consideration

The Task Force has developed legislative recommendations concerning theft or other unauthorized removal from Indian or Eskimo lands of objects of current religious significance to occupants of those lands; the export of important items of the Native American patrimony, sacred and other; the interstate transport or receipt of stolen Native American religious items; and the intentional conversion, theft, sale and possession of sacred objects belonging to Native Americans not presently protected by 18 USC 1163. Those recommendations are currently being reviewed within the Administration.

The Administration continues to recommend enactment of S.490 or H.R.1825, similar proposals entitled, "Archaeological Resources Protection Act of 1979," with the amendments offered in the Administration's reports on these bills.

III. RECOMMENDATIONS

F. Ceremonies and Traditional Rites

1. Background - Statement of Issues

Participation in ceremonies and traditional rites is an intrinsic part of the free exercise of Native American religions. A wide variety of ceremonies exists for such diverse purposes as the healing of diseases, the renewal of relationships with specific spiritual beings, the observance of seasonal and generative changes affecting particular sacred objects, the celebration of name-giving and initiations into spiritual societies and for the preparation of bodies for birth and death.

Tribal and societal customary law details the religious obligations of those involved and may decree, for instance, the duration and manner of preparation, the appropriate attire and appearance, the method of arrival and leave-taking, the proper conduct before and after the ceremony. Tribal traditional law may also mandate attendance and participation, as well as set standards for exclusion, and may proscribe conversation concerning details of certain ceremonies. Failure to observe these laws may hold severe consequences for the individual practitioner or the group as a whole.

These traditional ceremonial obligations have relation to certain federal practices and institutions. Many Native Americans are employed, housed and schooled by the federal government. Federal employment practices, geared towards a different concept of time and scheduled holidays, may interfere with these employees' needs and obligations regarding dates and duration of ceremonial events. Buildings constructed on Indian reservations with federal funds may not integrate relevant tribal cultural and religious concepts.

Native Americans in federal health care, educational or penal institutions may experience difficulty in access to necessary ceremonies and rites. Buildings constructed on Indian reservations with federal funds may not integrate relevant tribal cultural and religious concepts. Native American children in some foster and adoptive homes may be denied access to the cultural and religious life of their tribes and Native communities.

Some American Indian national divisions do not coincide with the geographical boundaries of the United States. Common cultural traditions continue on both sides of the border, but problems are often encountered when related people must cross borders in order to fulfill religious ceremonial obligations. (Cross-border issues involving transportation of sacred objects are discussed in Part III, D.)

Examples of problem areas and administrative responses are outlined in the next section, followed by a list of existing statutory authorities for these responses. (Particular problems identified are tabulated in Appendix C.)

2. Identification of Problems - Response

Identification of specific problems in this area is difficult, due to the existence of sanctions in many Native American religions against divulging information about ceremonies and traditional rites. Throughout the period of consultation there was an underlying suspicion that information would become the basis for further probing into the Native religious history and would result in excavations of traditional ceremonial sites by the applicable disciplines and agencies. History and past practice do little to allay this fear.

Child Welfare - Many problems identified during the consultation sessions relate to the Native American children who have been separated from their families, tribes and cultural heritage by placement in foster or adoptive homes. This problem was addressed effectively in the 95th Congress with the passage of the Indian Child Welfare Act of 1978, P.L. 95-608.

This Act establishes standards for the placement of Indian children and serves to prevent the breakup of Indian families, recognizing that Indian children have been separated from their parents and raised outside their homes at a shockingly higher rate than non-Indian children. The Act is now being implemented by the affected federal agencies and state and tribal courts, but its reversal effects will not be felt for a generation. Thus, this problem area will continue to be identified as a Native religious freedom impediment in relation to many of those children removed from their homes prior to 1978.

Education - Problems regarding federal educational institutions are being resolved through the contracting of those schools to tribes and the revision of BIA educational policies to ensure that the freedom of religion of students is not abridged. Increasing emphasis on the cultural content of federally-funded Indian education programs will necessarily increase the students' awareness of Native American religious beliefs.

In the newly published BIA regulations under the Education Amendments of 1978 (25 USC 2010, 2013), the religious freedom rights of Indian students are specifically noted in 25 CFR Part 31a, as the BIA policy to: "promote and respect the right to cultural practices, consistent with the provisions of the American Indian Religious Freedom Act."

In 25 CFR Part 31, the following are recognized: 1) the right to freedom of religion, and the right to be free from religious proselytization; 2) the right to cultural self-determination based upon tribal thought and philosophy; 3) the right to freedom of speech and expression, including choice of dress, and length of hair; 4) the basic right to an education requiring a staff which recognizes, respects and accepts the students' cultural heritage, its values, beliefs and differences; and 5) the right to a meaningful education which shall be designed to insure that tribal elders and members having a practicing knowledge of tribal customs, traditions, values and beliefs are utilized in the development and implementation of cultural programs.

Employment - Certain of the conflicts between federal employment practices and Native religious obligations were discussed during the consultation period. Unique problems arise where federal agencies are located upon the premises of an Indian Pueblo. A common occurrence is the closing of the Pueblo for religious ceremonies; often, there is no advance notice of the ceremony, the Pueblo people are required to remain at home, non-Pueblos are forbidden to observe and anyone working at the Pueblo must stay away.

This affects primarily the staffs of the Bureau of Indian Affairs (BIA) and Indian Health Services (IHS). The Task Force was advised by the BIA school superintendent at San Felipe Pueblo that federal employment procedures do not provide for staff disposition when religious ceremonies prohibit non-Pueblo staff from going to work. Thus, both Pueblo and non-Pueblo staff are forced to take annual leave.

The major governmental employers of Native Americans, the BIA and the IHS, are examining their employment practices as they affect the religious obligations of some tribes. The IHS is discussing the problem with its Indian Health Board. The Interior Assistant Secretary for Indian Affairs has directed the BIA to develop a plan that seeks to accommodate employees' religious practices requiring time away from work, and to examine the problem as it affects student time away from school.

This plan is to be developed in consultation with the affected employees and tribal and traditional religious leaders. It is authorized under the Federal Employees Flexible and Compressed Work Schedules Act of 1978, as amended, which requires the Office of Personnel Management to prescribe regulations to permit federal employees to engage in compensatory work for time lost while meeting religious requirements.

Facilities - Problems with design of federally-funded or federally-constructed facilities may be resolved through consideration of the problem in discussion with the tribe or group affected. The Department of Housing and Urban Development is presently revising its regulations to provide for the building of homes which take into account traditional and cultural factors in design and materials.

The new Public Health Service facility at Laguna Pueblo includes space specifically designed for Native religious use. Title IV of the 1978 amendments to the Older Americans Act for the funding of multipurpose senior centers on reservations does not include the prohibition of religious use of centers found in Title III of the Act on the funding of centers outside of Indian country, demonstrating the continued awareness by the Congress of the right of Indian tribes to practice their religions.

Health Care - Problems related to health care facilities are adequately and appropriately addressed in the newly developed policy of the Indian Health Service, and in Public Health and Veterans Administration facilities. Official policy provides for the consideration of the religious needs of patients and for accommodations for Native religious ceremonies and practices. During the Task Force consultations, abuses of this policy were specifically mentioned and decried by DHEW and IHS representatives.

The Rehabilitation Services Administration considers Native American religions in its counselling of Native Americans. Recent amendments to the Rehabilitation Act permitting tribal operation of rehabilitation programs will facilitate the use of Native American religious beliefs and ceremonies in the rehabilitation of disabled Native Americans.

Immigration - The Kickapoo Indians of this country and Mexico have a longstanding border-crossing agreement which does not impede their travels in fulfillment of ceremonial obligations. Their procedural arrangement with the appropriate local officials allows for early resolution of specific difficulties encountered. (Cross-border problems relative to the transportation of sacred objects are detailed in Section III, D.) The Yaqui Tribe of Arizona has experienced difficulty with the entry into the United States of Yaqui people from Mexico, whose participation is essential to certain ceremonies.

The tribes whose people reside on both sides of the border find it ironic that they are subject to immigration laws at all, as their territorial residence predates the national divisions by many centuries. However, through the Customs Committee on Indian Affairs, these tribes are working with the appropriate agencies, as well as their Canadian and Mexican counterparts, on particular problems as they arise. Immigration restrictions on the Canadian border have been removed, and present laws regarding entry into the country are sufficiently broad to permit entry of members of related groups for Native American religious ceremonies.

Penal Institutions - Native Americans have a disproportionately high arrest and incarceration rate - the highest of any identifiable group in the country. Native people incarcerated in federal prisons and federally-funded state institutions are subject to the policies of the Bureau of Prisons and the Law Enforcement Assistance Administration. Many Native American prisoners experience substantial difficulty in the practice of ceremonies and traditional rites, possession of sacred objects and access to spiritual leaders.

In federal prisons, where inmates' religious beliefs are recognized as important to the rehabilitative process, Native American religious needs are being administratively accommodated within existing statutory authorities and policy presently applied to the practice of other religions.

The Bureau of Prisons is presently preparing a policy statement on this subject. Additionally, it has established a special liaison team to work with the Office of Chaplaincy Services as a clearinghouse for Native concerns; modified prisoner placement and transfer criteria regarding the religious and cultural needs of Native prisoners; and permitted on a test-case basis sweat lodges, yuwipi ceremonies and possession of some items necessary to the practice of Native traditional religions.

The issue of use and possession of peyote is treated separately, however, because of its status as a controlled substance. The Task Force heard the views of traditional peyote religion and Native American Church leaders on this subject, who maintained that the peyote ceremonies could aid in rehabilitation and that Native American prisoners should have access to peyote roadmen, or ceremonial leaders. However, they took the position that peyote itself should not be brought into the prisons.

Examples of the problems faced by Native Americans in federal penal institutions and federally-funded state institutions are given tabular representation in Appendix C.

3. Statutory Authorities for Administrative Actions

5 USC 5550a (authorizes compensatory time off for federal employees for religious observances)

8 USC 1359 (exempts Canadian Natives from immigration laws)

25 USC 450 (Indian Self-Determination and Education Assistance Act of 1975 - allows for contracting of government programs to Indian tribes)

25 USC 1901 (Indian Child Welfare Act of 1978 - allows significant tribal direction in child custody and placement decisions)

29 USC 750 (allows tribes to establish rehabilitation programs for the disabled)

Title IV of the 1978 amendments to the 1965 Older Americans Act (funding provisions for senior centers on reservations allows for their use for Native American religious ceremonies under Title III of the Act)

IV. CONCLUSION

Speculative Possibilities

The American Indian Religious Freedom Act and the changes in federal policy which it mandates inevitably bring forth speculation regarding remote future possibilities that can be detrimental to the spirit of the law and to the subject as a whole. When the people of Taos Pueblo sought to restore their sacred Blue Lake area, forces opposing the restoration immediately began to speculate about possible commercial use of the heavily timbered lands. The return of Mount Adams to the Yakima Nation also spawned considerable speculation about the manner in which the Yakima people might use the land.

Generally, speculative questions regarding the Act's impact fall into three categories which can be easily identified: (1) possible future commercial use; (2) possible future controversy over minerals, commercial timber or water, which might be declared religious by Indians and Natives in an effort to seize control of the resources; and (3) possible future appropriation of Indian religious rites, ceremonies and substances by non-Indian groups. Although few facts can be found to demonstrate the viability of these fears, nevertheless, whenever the subject of protecting Native religious freedom and its exercise arises, these issues are raised in an attempt to both clarify and deter further action on the proposal.

A common characteristic of the speculative possibility is its abstract quality. No one points out specific locations which might be placed in jeopardy by guaranteeing religious freedom to Indians. What specific locations, mountains, rivers or valleys are being discussed when these issues are raised? Asking whether a broad and firm guarantee might pose future problems is simply rhetorical unless specific instances are made available as part of the inquiry. Neither traditional tribal nor any other religious groups are able to guarantee complete separation from controversy, unless they are given specific factual situations to which they can respond.

Another common characteristic of the speculative possibility is the Act's supposed national impact. Protecting the boundaries of state and church are certainly important, but to guarantee religious freedom to American Indians does not necessarily mean the establishment of traditional Native religions over and above other religions. All religious bodies face the possibility that some future action of the state may conflict directly with one or more of their beliefs. It is important to remember in this respect that traditional Native religions are not belief systems which require action in the abstract. Indian tribes and Native groups, as a matter of course, do not speculate on duties owed to either religion or the state without further consideration of the specific factual situation which might be encountered in the individual case. Thus, without venturing into comparison with any presently constituted religious body composed of non-Indians, it is possible to state that traditional Native religions have little chance of creating a national crisis in the church-state relationship.

Considering the three major categories of speculative questions outlined above, it is difficult to find a substantial reason for supposing that any would become critical factors inhibiting the enforcement of legislation, rules or regulations to guarantee American Indians freedom of religion. It is probably necessary, however, to review the three categories and discuss some of the possibilities which might be considered, and demonstrate the futility of speculating on remote possibilities.

Possible Future Commercial Use

The major sites of Native American religious ceremonials are already well known, and any future controversy must revolve around known sites, not any additional sites that might come into being. No tribes that are presently contituted and possess a living religious tradition can be expected to move beyond those ceremonies and rituals they are using already. The known shrines and sites originate in creation and migration traditions, which by their very nature are foreclosed for the remainder of this world.

Tribal religious people do not commemorate events of historical importance as patriotic religious shrines in a manner comparable to others. Thus, where non-Indians venerate Gettysburg, Arlington Cemetery and Mt. Rushmore as American shrines - giving rise to Robert Bellows' eloquent description of civil religion as a critical factor in the American emotional constitution - Indians do not venerate the Custer Battlefield, Sand Creek or any place that could be said to describe some of the most important incidents of recent history. It is the non-Indian who is just now discovering the religious value of places, and the danger of new shrines springing into being does not come from the Native American traditional people.

Commercialism with accompanying conflict already exists with respect to recreational expansion in several geographical areas of traditional religious significance to the Indian tribes and Native groups. In view of the contemporary demand for a changing, more energy-conscious life-style, approval of increased recreational development might be withheld for reasons having nothing to do with traditional Native religion, particularly in light of alternative sites which could be developed without injury to either the recreation industry or the Native shrines and sacred places.

American Indian resources have hardly been developed in non-sacred places on most reservations. The danger in discovering additional locations where development would be hampered by protecting the Indian use is minimal. But assuming that such a situation might occur, if the location is on a reservation, then Indians have the same rights as any other landowner and should not be forced to develop their lands. The best way to anticipate controversy and avoid it would be to survey the locations with real potential for conflict and begin planning now to confront these situations.

Native Efforts to Make Places Religious

Another commonly cited example is the instance in which Indians, discovering that a certain place has minerals, water or other resources, would declare the area to be religious and lay claim to it. This possibility projects behavior that can be anticipated from non-Indians to Indians, and is nothing more than a projected fear. No instance of this type of claim is known. Most Native people would summarily reject such an idea from the very beginning. Should such a situation occur, the motives behind the claim would be quite evident, and both Indians and non-Indians would act to prevent such a possibility from coming to fruition. The problems of evaluating such a claim do not differ inherently from those of other situations which call for the exposure of fraud.

Appropriation of Native Ceremonials by Non-Natives

In this area the responsibility lies wholly with the non-Natives to help Natives prevent non-Natives from exploiting Native culture. Too much of this exploitation now occurs with respect to Native history, dances, arts, crafts and songs, and most political bodies do nothing to prevent it. Sacred dances have been duplicated by non-Indian dance troupes, and this appropriation has been vigorously protested by Indians, with no visible results. Should non-Natives start to appropriate substances, costumes of particular religious significance or such specific materials as eagle feathers, Indians and Natives would act in concert with agencies to do as much as is legally possible to prevent such activities. It is not difficult to demonstrate that almost all Indian ceremonies, dances and songs originated in an event having the power and status of revelation by higher powers. Simply copying Native rituals is not practicing religion, as almost all theologians and historians of religion would testify. Indian replication of Christian ceremonials, for example, would not be within the Christian tradition, and would be identified as a very recent innovation, and traditional Native religions are entitled to the same recognition and protection.

Neither law nor religion sustains itself by refusing to act on the chance of remote possibilities that are raised by speculative ventures alone. The Constitution itself might not have been adopted or even written had the statesmen of those days refused to act because of the remote possibility that it would be misused by unknown future generations. Whether the Founding Fathers would now complain about the way public business is conducted is beside the point, since one cannot speak for personages long since departed. In the same manner, contemporary developments must confront contemporary and foreseeable conditions. They must not be subjected to remote possibilities with no factual structure to which one can respond.

Definition of Consulting Class

The American Indian Religious Freedom Act requires that administrative review occur in consultation with Native traditional religious leaders, with "Native" meaning American Indian, Aleut, Eskimo and Native Hawaiian people.

Important to the issue of consulting class under the Act are: 1) the definition of an American Indian; 2) the federal relationship to American Indian, Aleut, Eskimo and Native Hawaiian people and governments; and 3) the distinction, where it exists, between Native governments recognized by the United States and Native traditional governments, which may or may not be federally-recognized.

There are almost as many definitions of who is an Indian under federal law as there are statutes, programs or other reasons for defining an Indian. A common misconception among both Indians and non-Indians is that an Indian is a person who is one-fourth degree or more of Indian blood and a member of a federally-recognized tribe. This generalized definition, combining as it does a number of concepts, is not useful for purposes of the American Indian Religious Freedom Act.

The concept of federal recognition describes the political relationship between the United States and an Indian tribe. Recognition of a tribe by the Department of the Interior involves eligibility for federal services for Indians under a number of statutes, a trust relationship between the United States and tribes and preemption of much of the political power of the state on the tribe's reservation. All of these elements of federal recognition concern the status of the tribe itself as a political body and not necessarily that of individual Indians.

An individual Indian, on the other hand, may enjoy the legal status of an Indian in two basic ways: 1) the individual's tribal membership, or citizenship, which is a political relationship between the individual and the tribe and for political purposes defined and controlled by the tribe; 2) an individual may be considered an Indian within a definition of eligibility established in a statute by the Congress for a particular purpose, such as eligibility for a service program created to benefit a class of Indians as specified in the statute. This latter kind of specific definition embodies the attention of Congress rather than the political membership of the tribe or the social and cultural characteristics of a individual tribe.

In fact, the tribal political definition and the Congressional statutory definition serve different purposes and may encompass different though overlapping groups. For example, a federal program may be designed to serve Indians of one-fourth or more degree of blood of federally-recognized tribes. Individuals of the tribes with highly restrictive membership requirements, one-half, for example, might have the blood quantum necessary to qualify for federal services, but not for membership if their blood quantum is between one-fourth and one-half. One tribe may require members to have been born on the reservation, making it possible to be a full-blood of that tribe and still not eligible for membership. In the case of tribes with more lenient membership requirements, individuals may be enrolled tribal members, but lacking one-fourth degree blood quantum, and ineligible for federal services.

A third purpose for defining an Indian concerns interests in individual and tribal property. An individual may be ineligible for both tribal membership and federal services but still own an interest in trust or restricted property and be subject to federal supervision in its management. Congress has defined the class of people eligible to share in a claims judgment, which may be substantially different from the contemporary tribal membership or reservation service population. Federal law may require that a person be allowed to participate in tribal property interests, even though the tribe has divested that person of tribal membership.

The above definitions are directed at the purposes for which the definitions are suited - political, property or services. None is suitable for the purposes of the American Indian Religious Freedom Act, which is designed to protect the cultural and religious interests of individual Native Americans and Indian tribes and Native groups as cultures, rather than simply as political entities. Perhaps the best approach to definition is to view the matter within the functional cultural context: individuals who are accepted as Indian in the community in which they live.

For the purposes of the American Indian Religious Freedom Act, the political relationships between the tribe and the United States, as governments, or between the tribe as a government and an individual Indian tribal citizen are clearly irrelevant, as is the eligibility of an individual Indian for a particular federal program. Instead, the relevant considerations would appear to be whether an Indian is sincerely attempting to exercise a first amendment right which is a matter of federal law and, where applicable, whether an individual Indian is authorized to perform a particular ceremony or possess a certain sacred object, which is a matter of tribal law or custom.

As stated at the outset of this report, the status of the United States relationship with Native Hawaiian and Alaska Native peoples is under Congressional jurisdiction at present and subject to change. This is also the case with those American Indian tribes whose relationship with the United States has been the subject of a standing act of termination.

This relationship between any non-federally-recognized Native group and the United States could change in the future as a result of actions in any of the three branches of government. In 1978, the Department of the Interior undertook the federal acknowledgement project, in recognition of the possibility that there are tribal groups who should receive, but do not, the benefit of the special federal-Indian relationship.

Under the administrative recognition process, the essential factors in determining which Indian groups will be acknowledged as Indian tribes are: whether the group has been identified as an Indian tribe on a substantially continuous basis in historical times to the present; and whether the tribe has inhabited a specific area and has maintained tribal political influence or authority over its members. The group must show that it is composed principally of persons who are not members of another Indian tribe, and it cannot be a tribe which has been terminated by Act of Congress.

At present, there are nearly 500 governmental entities, including Indian tribes, pueblos, bands, rancherias, communities and Alaska Native villages and corporations, which are recognized as eligible for BIA trust services. Thus far, over fifty Indian groups have petitioned the Secretary for recognition as Indian tribes.

Over the next ten years, this administrative process, coupled with Congressional considerations of the ongoing Native Hawaiian and Alaska Native claims and relationships, will have clarified the presently confused definitions of tribe, Native and Indian. For federal agencies in their consultative processes, this means that many Native groups not presently "recognized" may be in this category soon, while few now included will be excluded in the future.

Tribal and Native governing bodies can be expected to alter somewhat their structure and relationship to their traditional religious leaders over the coming years, as federal policy continues to acknowledge that culture and traditions are the fabric of tribal life.

Not all societies are structured in the same way and there is a considerable variety in their institutions, their concepts and their organization categories. Federal policies to "civilize" the Indian people have restricted the free exercise of Indian religions, frequently due to an inability to understand the integral nature of Indian cultures and the pervasive role of religion in Indian life. A persistent theme in the history of federal Indian policy has been to introduce institutions and procedures to Indian tribes which would appear to be Indian versions of civilized arts of government, but which had the effect of fragmenting Indian cultures and imposing unsuitable structures on otherwise integrated cultures.

Certainly, the changed circumstances of reservation life may have dictated some adaptation on the part of Indian cultures. The hindsight of history teaches that lasting and effective adaptations cannot be dictated from outside the culture, but can only emerge from within as a natural process which draws on the inner strengths of the culture and its people.

Historically, federal agencies have sought to undermine traditional Indian means of self-government and impose non-Indian forms and procedures. These have fragmented the authority and effectiveness of the traditional cultural means of bringing about social harmony through a combination of religious and political institutions. To a large degree, Indian tribes have adopted constitutional forms of government, not as a natural adaptation to new circumstances in their lives, but out of a conviction that only a constitutional form of government would have a hope of achieving any semblance of recognition by federal and state governments.

In a number of cases of federally-recognized tribes, the adoption of a constitutional form of tribal government resulted in the concentration of political power in the hands of a more accommodating and acculturated segment of the tribal population. At the same time, the balance of the tribe found itself unable to participate in tribal self-government, because of religious beliefs proscribing the style and pattern of behavior required for successful manipulation of a constitutional representative form of government.

In many instances, then, federal policy has created a political stalemate within the Indian tribes. The federal government recognizes and deals exclusively with the constitutional form of government, which controls tribal land and resources, formal political institutions, law-and-order systems and service delivery agencies. At the same time on many reservations, the effective authority in the life of the tribe - filling most of the traditional roles of religious, political and social control - is still an outgrowth of the traditional Indian culture, which makes little distinction between religion and other aspects of human life. In these traditional cultures, all laws are spiritual (in the sense of life and substance) and form the foundation of government; whereas, in western cultures, laws are separate from religion (in the sense of prayer and a sometimes obligation) and church matters remain distinct from government.

As long as this stalemate and fragmented self-government is allowed to continue, Indian people will be denied the effective right to adapt themselves to modern circumstances in a way that is appropriate to their beliefs. Real progress in dealing with social and economic problems will be frustrated, and the reality of tribal constitutional government will be that it is more accountable to the federal government than to its own people.

In recognizing these facts, one does not denigrate the sincerity, leadership, honesty or sacrifice of generations of elected tribal officials who have tried to assure a semblance of tribal survival in the face of the realities of past federal policies that placed premiums on assimilation and penalities on cultural distinctiveness. It is consistent with the intent of Congress in passing the American Indian Religious Freedom Act to recognize that a more flexible approach to tribal self-government may well result in the evolution of forms of government which are adapted to the needs of the present day, while still consistent with fundamental Indian religious beliefs.

As the fiftieth year of the landmark Indian Reorganization Act nears, it is an opportune time for tribal leaders, appropriate agencies and the Congress to closely examine the extent to which the present forms and structures of tribal governments have been imposed from the outside and are inappropriate to the needs and religious beliefs of the Indian cultures and individuals which they now represent. Such scrutiny would have the intention of increasing flexibility in federal policy and in the structure of tribal governments, allowing for the full flowering of these cultures which have contributed so much to our present system of government.

Religious Freedom - Future Steps

Today, American society is making rapid gains in understanding as it confronts various problems. A multitude of legislation within the last two decades has served notice that the values of the majority are breaking down artificial barriers and now approaching a holistic view, comparable in most respects to the tradition carried forward by the American Indian community. But the potential for damage, albeit unwitting, to the Indian religious traditions remains the same as it always has been. Decisions by the people designated and authorized to administer institutional programs and enforce rules, regulations and statutes are not always grounded in a sophisticated understanding of the issues involved. More often, they reflect the popular conceptions of the time and in many instances these conceptions are remnants of past beliefs, not expressions of the most intelligent or progressive thinking of the day.

Many issues raised by the passage of the American Indian Religious Freedom Act reflect the prejudices and rigidity of past eras and not the matured understanding which characterizes contemporary America. Behind many objections may lurk the suspicion which the unfamiliar invokes in the mind before it comes to a more perfect understanding. It is clear from the direction of growth in understanding that has characterized American society in this century and from the adoption of a specific statement on American Indian religious freedom by the Congress, that a policy of removing barriers to Indian religious freedom is perceived as the next step in the growth of American religious freedom and political maturity. Such a step synthesizes progress already made in preventing not simply the establishment of a denomination under the Constitution, but the entrenchment of a particular cultural interpretation with the longstanding traditions of the indigenous peoples.

If, as Mr. Justice Holmes once remarked, the Fourteenth Amendment did not enact Mr. Herbert Spencer's Social Statistics, neither did it nor the Constitution entrench organizational and institutional participation as the criteria for identifying, respecting, protecting and understanding religious activities. Instead of the presumption that religious activities must occur in familiar forms and in restricted patterns of behavior, federal officials must come to recognize the integrity of internal discipline which the Indian tribal traditions emphasize. The requirement is merely a change of attitude from the negative prohibition on behavior because other groups do not follow the same procedures to a positive encouragement of allowing Indians the freedom of expression critical to the performance of their ceremonies.

In the future, as in the past, there will be mistakes in the interpretation of laws, rules and regulations and a certain degree of friction between misinformed federal officials and practitioners of the Indian religions. Past experience has shown that, when properly informed as to the importance of specific practices, all branches of the federal government make every effort to support and protect the practice of Indian religion.

In summary, the American Indian Religious Freedom Act is a major and positive step in protecting Indian religious activities from mistaken or thoughtless interference. It does not constitute the establishment of a religion. The premises of Native tribal religions differ so fundamentally from the religions of the majority in perspective and practice that the traditional dangers against which the establishment clause guards do not exist. Although past injustices have been visited upon practitioners of Native tribal religions, for the most part there has not been a systematic suppression of Indian religions because they were religions, and the injustices have been the product of a broader misapprehension of the nature of culture and society. Moving now to adjust attitudes and viewpoints to support the formal protection of tribal religions is a further step in the maturing process which has proven so beneficial to American society in this century.

Appendix A

Background - Legislative History

Signing Statement, August 12, 1978

Joint Resolution - American Indian Religious Freedom, P.L. 95-341

Department of the Interior Statement on S.J. Res. 102, February 27, 1978

Department of Agriculture Statement on S.J. Res. 102, February 27, 1978

Interior Assistant Secretary - Indian Affairs Memorandum Proposing Intra-Departmental Task Force on Issue of American Indian Religious Freedom, February 24, 1978

President's Letter to Senator Abourezk on Issue of Religious Freedom for American Indians, November 28, 1977

Senator Abourezk's Letter to the President on Issue of Religious Freedom for American Indians, November 16, 1977

A. Background - Legislative History

Senate Joint Resolution 102 was introduced on December 18, 1977, and referred to the Senate Select Committee on Indian Affairs. A companion measure, H.J. Res. 738, was introduced on February 14, 1978, and referred to the House Interior Subcommittee on Public Lands and Indian Affairs. These historic measures proposed to set forth United States policy to protect and preserve the inherent right of American Indian, Eskimo, Aleut and Native Hawaiian people to believe, express and exercise their traditional religions.

The resolutions recognized that abridgements of Native American religious freedom had resulted from a lack of consistent policy and insensitive, inflexible regulatory enforcement at the federal level. Federal laws pertaining to the preservation of endangered species, for example, inadvertently infringe on the rights of Native people because their interest was not considered by the Congress in passing such laws.

Efforts to organize Indian concern began in the early 1970s, following the arrest of members of the Cheyenne and Arapaho Tribes of Oklahoma for sale and possession of eagle feathers in violation of the Bald Eagle Protection Act. Strict enforcement of this law against the Nation's only people with a religious duty attached to feathers caused considerable concern among tribes throughout the country. At a 1974 national meeting of traditional Native religious leaders in New Mexico, concerns were expressed that wilderness and wildlife conservation laws had the effect of inhibiting Native people exclusively in the exercise of their religion. Access to ceremonial sites, even cemeteries, had been denied. Sacred relics had been confiscated, and purified medicine bags opened and desecrated by authorities at state and national borders. As a result of this meeting and subsequent negotiations with federal officials, certain administrative accommodations were made in regard to the American Indian use and possession of eagle feathers.

In 1977, the Senate Select Committee on Indian Affairs held several conferences to address ways to alleviate the adverse impact of pertinent laws and procedures on the Native religions. Although there was clear potential for legislative action, consensus at these conferences was that much could be gained from executive action and a consultation process with traditional Native religious leaders. It was agreed that close consultation at every stage of the effort would better define problem areas and afford the enforcing agencies a clearer view of changes needed. The Committee chairman, Mr. Abourezk, communicated this intended action to the White House. The President responded on November 28, 1977, with assurances of "thorough, sensitive, and prompt attention and consideration."

On February 24, 1978, the Senate Committee held hearings on S.J. Res. 102. Testimony was received from more than thirty traditional American Indian and Hawaiian Native religious leaders expressing enthusiastic support for the measure. The All-Indian Pueblo Council offered commendation for the Committee's "deep and unwavering interest in the preservation of the Indian community, their religion and their culture." 1/ The Church of Hawaii Nei wrote, "Mahalo nui loa for your efforts on our behalf." 2/ The Crow representative observed, "The laws that protect birds, animals, plants and our Mother Earth from people who have no respect for these things serve to inhibit the free exercise of religion and the free use of religious artifacts and free access to religious sites when these American Indians pose no threat to them." 3/

Statements by Committee members were no less supportive. Mr. Bartlett of Oklahoma stated:

> "We do not need to add continued violation of American Indian religious freedom to the long list of rights consistently abridged by the Federal government. It should be a relatively simple matter to establish a federal policy to preserve and protect Indian freedom of religion, and develop a new sensitivity to traditional Indian culture.." 4/

Mr. Inouye of Hawaii expressed his support of S.J. Res. 102, relating it to his knowledge of Native culture and religion in his home state:

> " ... despite the progressive demise of the Hawaiian culture including its religious component, certain traditions and beliefs remain. To those individuals who still harbor these traditions and beliefs, the ability to freely express and practice them is of utmost importance to their identity as Hawaiians and to their spiritual well-being." 5/

On March 12, 1978, S.J. Res. 102 was reported amended by the Senate. Senate Report No. 95-709 contains this observation from Mr. Abourezk:

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1. American Indian Religious Freedom: Hearings on S.J. Res. 102 Before the Select Committee on Indian Affairs, 95th Cong., 2d Sess. 17 (1978)(statement of Frank Tenorio).
2. id., p. 46.
3. Id., p. 25.
4. Id., p. 7.
5. Id., p. 9.

> "Even the most ardent conservationist cannot match the need of traditional Indians for preserving eagles and hawks. For some plains Indians, much of their religion depends on the existence of these species. Yet, prohibiting the possession and exchange by Indians of feathers in one's family for generations, or the use of feathers acquired legally does not help preserve endangered species. It does prevent the exercise of American Indian religions. Although the enforcement problems create more difficult administrative issues and require more careful consideration of regulation changes in this area, it is possible to both uphold the intent of the laws and allow for religious freedom." 6/

On April 3, 1978, S.J. Res. 102 passed the Senate as reported by a voice vote.

On July 17, 1978, Mr. Udall of Arizona, a co-sponsor of the Resolution, delivered an eloquent and persuasive floor statement on H.J. Res. 738 consent action:

> "It is stating the obvious to say that this country was the Indians' long before it was ours. For many tribes, the land is filled with physical sites of religious and sacred significance to them. Can we not understand that? Our religions have their Jerusalems, Mount Calvarys, Vaticans and Meccas. We hold sacred Bethlehem, Nazareth, the Mount of Olives, and the Wailing Wall. Bloody wars have been fought because of these religious sites.
>
> * * *
>
> "It is the intent of this bill to insure that the basic right of the Indian people to exercise their traditional religious practices is not infringed without a clear decision on the part of the Congress or the administration that such religious practices must yield to some higher consideration." 7/

On July 18, 1978, H.J. Res. 738 was amended and passed by a voice vote. And, on August 11, 1978, the American Indian Religious Freedom Act was approved. The President concluded his signing statement on this note: "I welcome enactment of this Resolution as an important action to assure religious freedom for all Americans."

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6. D. Rep. No. 95-709, 95th Cong., 2d Sess. 3 (1978).
7. Cong. Rec. H6872 (1978)(daily ed. July 18, 1978)(remarks of Rep. Udall).

CHRONOLOGY

42 U.S.C. 1996
Public Law 95-341, 92 Statute 469
S.J.R. 102 and Senate Report No. 95-709 - March 21, 1978
H.J.R. 738 and House Report No. 95-1308 - June 19, 1978

December 15, 1977	Introduced in the Senate by Mr. Abourezk, Mr. Humphrey, Mr. Kennedy, Mr. Inouye, Mr. Matsunaga, Mr. Hatfield, Mr. Stevens, Mr. Gravel and Mr. Goldwater, C.R. Vol. 123, S. 19765. Referred to the Senate Select Committee on Indian Affairs.
February 24, 1978	Hearings in the Senate before the Senate Select Committee on Indian Affairs.
March 12, 1978	Report amended by the Senate. Report No. 95-709.
April 3, 1978	Passed the Senate as reported by a voice vote. C.R. Vol. 124, S. 4590.
April 5, 1978	Referred to the House Committee on Interior and Insular Affairs.
July 17, 1978	Statement in the House by Mr. Udall relative to consent action on House Joint Resolution 738. C.R. Vol. 124, H. 6842.
July 18, 1978	Amended to contain text of H.J.R. 738 as passed by a voice vote.
July 18, 1978	Passed the House as amended by a voice vote. C.R. Vol. 124, H. 7017.
July 19, 1978	Explanation of vote on H.J.R. 738 by Mr. Cohen. C.R. Vol. 124, H. 7017.
July 27, 1978	House amendments agreed to by the Senate by a voice vote. C.R. Vol.124, S. 11988.
August 11, 1978	Approved by the President to become P.L. 95-341.

FOR IMMEDIATE RELEASE **AUGUST 12, 1978**

Office of the White House Press Secretary

THE WHITE HOUSE

The President has signed S.J. Res. 102, which declares Federal policy to protect freedom of religious belief and exercise on th part of Native Americans. A report to the Congress is required in twelve months after an Executive Branch evaluation of this issue. The resolution is designed primarily to assure that Fedreal programs (such as Federal land management and customs procedures) are administered to accommodate and be sensitive to traditional native religious beliefs and practices.

The President issued the following statement on S.J. Res. 102:

SIGNING STATEMENT
SENATE JOINT RESOLUTION 102
ON AMERICAN INDIAN RELIGIOUS FREEDOM

I have signed into law S.J. Res. 102, the American Indian Religious Freedom Act of 1978. This legislation sets forth the policy of the United States to protect and preserve the inherent right of American Indian, Eskimo, Aleut, and Native Hawaiian people to believe, express and exercise their traditional religions. In addition, it calls for a year's evaluation of the Federal agencies' policies and procedures as they affect the religious rights and cultural integrity of Native Americans.

It is a fundamental right of every American, as guaranteed by the First Amendment of the Constitution, to worship as he or she pleases. This act is in no way intended to alter that guarantee or override existing laws, but is designed to prevent government actions that would violate these Constitutional protections. In the past government agencies and departments have on occasion denied Native Americans access to particular sites and interfered with religious practices and customs where such use conflicted with Federal regulations. In many instances, the Federal officials responsible for the enforcement of these regulations were unaware of the nature of traditional native religious practices and, consequently, of the degree to which their agencies interfered with such practices.

This legislation seeks to remedy this situation.

I am hereby directing that the Secretary of the Interior establish a task force comprised of representatives of the appropriate Federal agencies. They will prepare the report to the Congress required by this Resolution, in consultation with Native leaders. Several agencies, including the Departments of Treasury and Interior, have already taken commendable steps to implement the intent of this Resolution.

I welcome enactment of this Resolution as an important action to assure religious freedom for all Americans.

JIMMY CARTER

# # #

APPENDIX A

S. J. Res. 102 **PUBLIC LAW 95-341**

Ninety-fifth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Thursday, the nineteenth day of January, one thousand nine hundred and seventy-eight

Joint Resolution

American Indian Religious Freedom.

Whereas the freedom of religion for all people is an inherent right, fundamental to the democratic structure of the United States and is guaranteed by the First Amendment of the United States Constitution;

Whereas the United States has traditionally rejected the concept of a government denying individuals the right to practice their religion and, as a result, has benefited from a rich variety of religious heritages in this country;

Whereas the religious practices of the American Indian (as well as Native Alaskan and Hawaiian) are an integral part of their culture, tradition and heritage, such practices forming the basis of Indian identity and value systems;

Whereas the traditional American Indian religions, as an integral part of Indian life, are indispensable and irreplaceable;

Whereas the lack of a clear, comprehensive, and consistent Federal policy has often resulted in the abridgment of religious freedom for traditional American Indians;

Whereas such religious infringements result from the lack of knowledge or the insensitive and inflexible enforcement of Federal policies and regulations premised on a variety of laws;

Whereas such laws were designed for such worthwhile purposes as conservation and preservation of natural species and resources but were never intended to relate to Indian religious practices and, therefore, were passed without consideration of their effect on traditional American Indian religions;

Whereas such laws and policies often deny American Indians access to sacred sites required in their religions, including cemeteries;

Whereas such laws at times prohibit the use and possession of sacred objects necessary to the exercise of religious rites and ceremonies;

Whereas traditional American Indian ceremonies have been intruded upon, interfered with, and in a few instances banned: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

Sec. 2. The President shall direct the various Federal departments, agencies, and other instrumentalities responsible for administering relevant laws to evaluate their policies and procedures in consultation with native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices. Twelve months after approval of this resolution, the President shall report back to the Congress the results of his evaluation, including any changes which were made in administrative policies and procedures, and any recommendations he may have for legislative action.

Thomas P. O'Neill Jr.

Speaker of the House of Representatives.

James O. Eastland

~~Vice President of the United States and~~
President of the Senate pro Tempore

APPROVED
AUG 11 1978

Jimmy Carter

APPENDIX A

STATEMENT BY GEORGE GOODWIN, DEPUTY ASSISTANT SECRETARY OF THE INTERIOR FOR INDIAN AFFAIRS BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS ON S.J. RES. 102, AMERICAN INDIAN RELIGIOUS FREEDOM, FEBRUARY 27, 1978.

Mr. Chairman, members of the Committee, and staff, my name is George Goodwin, I am a member of the Minnesota Chippewa Tribe and Deputy Assistant Secretary of the Interior for Indian Affairs.

We recommend passage of S.J. Res. 102 with clarifying language which will be presented to you today by the Department of Justice. That language would insure that no provision of the resolution would be construed as amending existing law.

Mr. Chairman, we support and endorse the policy of the United States expressed in S.J. Res. 102 to protect and preserve for American Indians their right to believe, express, and exercise their traditional religions. Indians have often experienced interference with, and sometimes outright banning of, their religious ceremonies and the objects and artifacts associated with those ceremonies. That interference is often the result of administrative regulations and policies carried out with little awareness or concern for their impact on the practices of traditional Indian religion.

We believe that in order to make the policy of Indian self-determination meaningful it is necessary for the Federal government to address the conflicts between its policies and procedures and the practice of traditional Indian relgions.

S.J. Res. 102 goes further than just stating policy, however. It directs the President to direct the various Federal departments, agencies, and other instrumentalities responsible for administering laws which affect Indian religious freedom to evaluate their policies, in consultation with Indian Native religious leaders, in order to determine and implement changes which may be necessary to protect and preserve Native American religious cultural rights and practices.

A group of representatives from the various agencies whose activities impact on traditional Indian customs and practices met last November with representatives of this Committee to discuss possible conflicts between their activities and Indian religious customs. It was decided at that meeting that such an interagency group should operate as a task force to be coordinated by the Department of the Interior. An important goal of such a task force, decided at this initial meeting, is to consult with Native American religious leaders in order to accommodate Indian tradition wherever possible in enforcement procedures and policies.

On-going conversations with the other federal agencies responsible for administering laws which affect Indian religious practices encourage us that there is widespread interest and support for a review of administrative procedures with a view to identifying and correcting, where possible, problems Indian traditionalists have with the ways our laws are being enforced. With such interest extending from the highest levels in this Administration and among the various Departments, we are encouraged that such a review will be an effective one with gratifying results. Certainly, the Department of the Interior will welcome and cooperate with a congressional directive for a formal review of our procedures in protecting Indian religious rights.

Thank you for the opportunity to address this most important subject. My associates and I will be pleased to answer any questions the Committee may wish to ask.

APPENDIX A

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

Honorable James Abourezk
Chairman, Select Committee on
Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I appreciate the opportunity to comment on S.J. Res. 102. The protection and preservation of religious freedom for American Indians is vital to their cultural integrity and to the democratic traditions of this country.

I know you are aware of my special interest and personal involvement as a Member of Congress in the many needs and problems of American Indians. Because of this concern, several weeks ago I established a Native American Task Force in the Department of Agriculture to improve the effectiveness of USDA's programs as they apply to Native Americans.

The Task Force, composed of four of my assistant secretaries and supporting agency staff people as required, will report to me quarterly. It occurs to me that a system such as our Task Force might be the type of vehicle that could be created in other executive departments to deal with the purpose of S.J. Res. 102, as well as the many other issues and problems that confront American Indians.

The difficulties experienced by American Indians in practicing their traditional religions have already been discussed by our Task Force. I thoroughly support your efforts to resolve any conflicts between American Indian religious practices and Federal policies. You may be assured I will cooperate fully with any Presidential directive having that objective.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Bob Bergland

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

FEB 24 1978

Memorandum

To: Assistant Secretary - Energy and Minerals
Assistant Secretary - Land and Water Resources
Acting Assistant Secretary - Policy, Budget, and Administration
Assistant Secretary for Fish and Wildlife and Parks

From: Assistant Secretary - Indian Affairs

Subject: Indian Religious Freedom Bills

One of the important issues that has faced this Administration, and more specifically the Department of Interior, is one of a basic recognition of the rights of Indian people to practice their religion, traditions and customs. In an attempt to reaffirm these rights, S.J. Resolution 102 has been introduced in the Senate and H.J. Resolution 738 has been introduced in the House. Copies of both are attached.

Oftentimes, these rights may conflict with various administrative procedures and practices of the various Bureaus within the Department. These conflicts deal with the possession by Indians of eagle feathers for ceremonial purposes, carrying out religious practices on public lands, or gathering roots and plants for medicinal purposes within park boundaries.

I am proposing that the various Assistant Secretaries form an intra-agency task force to deal with this issue and analyze our respective rules and regulations which we use to administer our programs and develop an action plan which would recognize the First Amendment rights of Indian people.

I would appreciate it if you would name a person or persons whom you feel could serve on a task force to address this issue and work toward finalizing a plan of action.

Please notify Deputy Assistant Secretary George Coodwin, extension 4174, by March 3 on whom your representative will be. The initial meeting will be scheduled the following week.

Forrest J. Gerard

Attachments

APPENDIX A

THE WHITE HOUSE
WASHINGTON

November 28, 1977

To Senator James Abourezk

Thank you very much for your letter of November 16 and the background information on the issue of religious freedom for American Indians.

I have requested my Counsel, Bob Lipshutz, to coordinate with Stu Eizenstat, the Secretary of the Interior, and the Attorney General, for the purpose of working with you and your Committee on this matter.

Please be assured that this will be given thorough, sensitive, and prompt attention and consideration.

Best personal regards.

Sincerely,

Jimmy Carter

Honorable James Abourezk
United States Senate
Washington, D. C. 20500

APPENDIX A

November 16, 1977

President Jimmy Carter
THE WHITE HOUSE
Washington, D. C.   20503

Dear Jimmy:

I want you to have this copy of the background memorandum prepared by the Senate Committee on Indian Affairs on the issue of religious freedom for American Indians.

Given your stand for human rights around the world and the significance of your own religious experience, I have confidence that you will give this problem your careful consideration. It is an area which is readily supported by most Americans and the concept is certainly fundamental to the Bill of Rights.

Key Senate and House leaders have indicated strong support for a Congressional Resolution on this matter which I plan to introduce later this month. The Resolution would clarify that the Federal policy is to protect and preserve the rights of Indians to their religious and cultural integrity. As a practical matter, the most effective approach should come from the Executive. A policy directive from you can directly address the neglect and insensitive regulations which have prevented Indians from the free exercise of their traditional religions.

Thank you for your concern. With warmest personal regards, I am

Sincerely,

James Abourezk

James Abourezk, Chairman
Senate Select Committee
on Indian Affairs

JA/ea

Appendix B

Memorandum, National Endowment for the Humanities Deputy Chairman, Preliminary Evaluation of Issues Related to Compliance with P.L. 95-341, August 6, 1979

Letter, U.S. Customs Service Chief Counsel, Report Review and Comment, August 3, 1979

Letter, Department of the Navy, Deputy Under Secretary of the Navy, Summary Statement, August 2, 1979

Letter, Department of Health, Education and Welfare, Intra-Departmental Council on Indian Affairs Chairman, Transmitting Summary Statement of Indian Health Service, July 26, 1979

Memorandum, National Park Service, Interior Deputy Assistant Secretary for Fish and Wildlife and Parks, Consultation with Native American Traditional Religious Leaders, July 20, 1979

Memorandum, Secretary of the Interior, Preparation of Final Report Required by P.L. 95-341, June 27, 1979

Letter, Secretary of Health, Education and Welfare, Transmitting Evaluations of Administration on Aging, Rehabilitation Services Adminsitration, Education Division and Social Security Administration, May 31, 1979

Memorandum, Fish and Wildlife Service, Interior Assistant Secretary for Fish and Wildlife and Parks, Review of Policy and Procedures for their Impact on Native American Religious Freedoms, May 15, 1979

Letter, Forest Service Deputy Chief, Evaluation of Policies and Procedures as a Result of P.L. 95-341, May 10, 1979

Memorandum, Bureau of Land Management, Interior Assistant Secretary for Land and Water Resources, Preliminary Evaluation of Issues Related to Compliance with P.L. 95-341, April 17, 1979

Memorandum, National Park Service, Interior Assistant Secretary for Fish and Wildlife and Parks, Internal Review and Recommendations to the Task Force on Implementation of the American Indian Religious Freedom Act of 1978, April 12, 1979

Letter, Tennessee Valley Authority, Manager, Office of Natural Resources, Initial Report Concerning the TVA's Implementation of the Indian Religious Freedom Act of 1978, April 12, 1979

Letter, Department of Commerce, Economic Development Administration Special Assistant for Indian Affairs, Reporting National Marine Fisheries Service as only Commerce unit that may apply under P.L. 95-341, April 9, 1979, March 29, 1979

Letter, Heritage Conservation and Recreation Service Interagency Archeological Services Archaeologist, Report of Steps to Implement P.L. 95-341, April 5, 1979

Agenda, April 2, 1979, Meeting of the Task Force to Prepare the American Indian Religious Freedom Act Implementation Report

Letter, U.S. Commission on Civil Rights Assistant General Counsel, Report on Relevance to P.L. 95-341, March 30, 1979

Memorandum, Department of Energy Specialist for Indian Affairs, Initial Submission to Task Force on Religious Freedom, Match 30, 1979

Letter, Deputy Assistant Secretary of Defense, Report on Department-wide Survey Regarding P.L. 95-341, March 22, 1979

Memorandum, American Folklife Center Director, Internal Review and Recommendations Pertaining to Implementation of P.L. 95-341, March 16, 1979

Letter, U.S. Customs Service Chief Counsel, Report on Implementation of P.L. 95-341, March 6, 1979

Letter, Department of Housing and Urban Development, Special Assistant to the Secretary - Indian and Alaska Native Programs, Review on P.L. 95-341 in Process, February 26, 1979

Memorandum, Secretary of the Interior, Establishment of Task Force to Prepare the Report to the Congress on Implementation of P.L. 95-341, January 26, 1979

NATIONAL ENDOWMENT FOR THE HUMANITIES

WASHINGTON, D.C. 20506

August 6, 1979

MEMORANDUM

TO : Secretary of the Interior
ATTN: Assistant Secretary of Indian Affairs

FROM : Patricia McFate Patricia McFate
Deputy Chairman

SUBJECT : Preliminary Evaluation of Issues Related to Compliance with the American Indian Religious Freedom Act, P.L. 95-341

The National Endowment for the Humanities is fully committed to the implementation of the American Indian Religious Freedom Act of 1978. All Endowment policy and programs are developed and administered in harmony with the goals of this Act. The Endowment firmly believes that the protection of Native American cultural rights is consistent and in accord with the agency's stated goals as directed by the Congressional act which established the National Endowment for the Humanities in 1965. These goals are:

-- to promote public understanding and use of the humanities and to relate the humanities to current conditions of national life;

-- to improve the quality of humanities programs in educational institutions, and to encourage and assist nontraditional ventures in humanistic learning;

-- to enrich and broaden the intellectual foundations for humanistic endeavors, and to support scholarly additions to humanistic knowledge;

-- to sustain and enhance essential facilities and resources which undergird humanistic pursuits and to help inform the future role of humanistic concerns.

The Endowment is establishing an internal agency task force to monitor and promote the application of Public Law 95-341 in the areas of new agency policy considerations, grant application guidelines, grant evaluation procedures, and agency staff education on the significance of the Law to all areas of Endowment policy and programs.

The National Endowment for the Humanities views the American Indian Religious Freedom Act (P.L. 95-341) as a significant measure in advancing research, education, and public activity in the humanities.

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

AUG 03 1979

REFER TO

Ms. Suzan Harjo
Special Assistant to the Assistant
  Secretary for Indian Affairs
U. S. Department of Interior
Washington, D. C. 20240

Dear Ms. Harjo:

This is in response to your request for review and comment upon the proposed report to the President pursuant to P.L. 95-341, the American Indian Religous Act of 1978. You also requested a succinct statement summarizing the activities of the Customs Service undertaken pursuant to the Act.

I have reviewed the draft copy of the report and find it to be excellent, both in substance and format. You and all who participated in its preparation are to be highly commended. Being somewhat familiar with the large volume of facts, data, etc. which you received by way of input, I have a real appreciation for what you have accomplished. The report is well organized and well written.

As discussed with you on the telephone, I believe that, for purposes of clarification, it would be appropriate to make a couple of insertions in the pages which cover the subject areas in which the Customs Service has a particular interest. In accordance with your suggestion, I am enclosing a couple of draft paragraphs, for your consideration, which may accomplish that objective.

Also enclosed is a summary statement of what the Customs Service has done during the past year to carry out the spirit and purpose of the Act.

I have also reviewed the copy of the transcript of the Great Falls consultation and am enclosing certain pages with needed corrections made thereon.

REPLY TO: COMMISSIONER OF CUSTOMS, WASHINGTON, D.C. 20229

With the expectation that this summary will be included in the report and that the clarifications referred to above will be made, I fully concur in the proposed report, and to the recommendations made as to the content of the proposed Executive Order and needed legislation.

In conclusion, I wish to take this opportunity to say that it was a real privilege to have had the opportunity to serve with you and others on the Inter-Agency Task Force to carry out this very important and significant project.

Sincerely,

Thaddeus Rojek

Thaddeus Rojek
Chief Counsel

Enclosures

ORIGINATING OFFICE: CC

DISTRIBUTION: P-33, G-01

POLICIES & PROCEDURES MANUAL

MANUAL TRANSMITTAL

NUMBER: 3300-05

ISSUE DATE: September 15, 1978

SUBJECT: Policy to Protect and Preserve American Indian Religious Freedom

PURPOSE

To transmit Policy Statement 3300-02.

BACKGROUND

President Carter has signed into law Senate Joint Resolution 102, the American Religious Freedom Act of 1978. It sets forth the policy of the United States to protect and preserve for American Indian, Eskimo, Aleut and native Hawaiian people their inherent right to believe, express and exercise their traditional religions.

The intention of the resolution is to assure that certain Federal programs which affect Indians (such as Customs inspection procedures and Federal land management) are administered in a manner which reflects an awareness of and sensitivity to the traditional Indian beliefs and practices and to the various sacred and natural articles and objects (such as medicine bags or bundles, certain animal parts, hoofs, horns, certain grasses, reeds, herbs, roots, etc.) used in the exercise of those religious beliefs and customs.

An interagency task force established by the Secretary of the Interior is directed to evaluate agency policies and procedures which affect these religious rights and report to the President and Congress in 1 year the steps taken to implement this resolution. The Customs Service is represented on that task force and will participate fully in the efforts of that group. In addition Customs has established an American Indian Affairs Committee made up of representatives from each of the affected regions. Regional Commissioner Albert G. Bergesen is the chairman of this committee which has already met with Indian representatives. It has been learned from meetings held to date that sometimes a lack of knowledge or an unawareness of native Indian cultural or religious customs, practices, and beliefs on the part of Customs officers has led to insensitive handling or treatment by them of objects or articles considered sacred by Indians. Sometimes insensitive handling of such articles or objects by Customs officers has rendered them valueless for the religious, spiritual or cultural purpose they were intended to serve.

Attached for further background and ready reference are a copy of the Joint Resolution and the related White House Press Release.

NATURE OF THE ISSUANCE

The attached policy statement sets forth the Federal policy and sets forth measures to be undertaken by Customs to implement the Federal policy.

CS Form 232-D (6-2-77)

EFFECT ON OTHER ISSUANCES

None

REMOVAL AND INSERTION OF PAGES

Remove: None

INSERT: Policy Statement 3300-02 in a binder marked:
Policies of the United States Customs Service

AUTHENTICATION

R. E. Chasen

Commissioner of Customs

Attachment

POLICIES & PROCEDURES MANUAL

POLICY STATEMENT

NUMBER: 3300-02

MT 3300-05

September 15, 1978

SUBJECT: Policy to Protect and Preserve American Indian Religious Freedom

Recently enacted Senate Joint Resolution 102, the American Indian Religious Freedom Act of 1978, sets forth policy of the United States to protect and preserve for American Indians, Eskimos, Aleuts and native Hawaiians their inherent right to believe and practice their traditional religions. It is essential to assure that Federal programs which affect Indians (such as border inspection procedures) are administered in a manner which implements that policy.

Through both an inter-agency task force and Customs Indian Affairs Committee, we will attempt to identify and define problem areas more precisely, to identify and perhaps catalog the various articles and objects which have religious significance to the respective Indian tribes and will evaluate our policies and procedures in consultation with Indian religious leaders in order to determine what changes could or should be made in order to protect and preserve native American Indian religious cultural rights and practices.

In the interim, to carry out the spirit and purpose of the declared Federal policy, you should make certain that all Customs officers under your supervision who are responsible for examining and clearing articles accompanying American Indians, Eskimos, Aleuts and native Hawaiians crossing our land borders or otherwise arriving in the United States are fully aware of this policy and its intent and purpose. You should institute measures to assure that such Customs officers are made aware or more aware of the traditional Indian beliefs and practices in order to insure that in the course of their inspection and examination, they treat more sensitively the various articles that are used by Indians in the exercise of their religious and cultural beliefs.

You will be provided with appropriate guidelines covering this subject once they have been formulated.

As a Service we want to do whatever we can to carry out this policy of assuring religious freedom for all Americans.

DEPARTMENT OF THE NAVY
DEPUTY UNDER SECRETARY OF THE NAVY
WASHINGTON, D.C. 20350

2 August 1979

Ms. Suzan Harjo
U.S. Department of Interior
Office of the Secretary
Washington, D.C. 20240

Dear Suzan:

The following statement is forwarded for inclusion in the evaluation and reports section of the task force report to the President:

> The Department of the Navy has been an active participant in the subject task force and has evaluated relevant policies and procedures in light of the American Indian Religious Freedom Act in order to determine what, if any impacts may occur upon the religious practices of Native Americans.
>
> The Navy has identified two specific problem areas at China Lake, California and Kahoolawe, Hawaii. The Navy is diligently working to allow the desired access to these areas in a manner which is both safe to the participants and not disruptive to the Navy's mission.
>
> In May of 1979 a message was sent to all Naval Stations by the Secretary making them aware of the requirements of the American Indian Religious Freedom Act and advising them to give deliberate consideration to legitimate religious concerns of Native Americans.
>
> The Navy will continue to cooperate with native traditional religious leaders in an ongoing effort to ensure the free exercise of religious rights while at the same time ensuring the safety of all personnel and the completion of its military mission.

Sincerely,

Mitzi M. Wertheim

Mitzi M. Wertheim

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

July 26, 1979

Mr. Forrest Gerard
Assistant Secretary for
Indian Affairs
Bureau of Indian Affairs
Room 4600
1951 Constitution Avenue, N.W.
Washington, D.C. 20245

Dear Mr. Gerard:

The Indian Health Service (IHS), within the Department of Health, Education, and Welfare, has completed an evaluation of its policies and procedures to determine compliance with the American Indian Religious Freedom Act. The Indian Health Service has stated that it recognizes the value and efficacy of traditional beliefs and practices and is committed to preserving the inherent right of American Indians to express and exercise their traditional religious beliefs.

Enclosed is the full text of the IHS evaluation report which details the agency's policies and procedures relevant to the American Indian Religious Freedom Act. The report is transmitted to you for inclusion in the Task Force report to Congress on implementation of the Act.

Sincerely,

A. David Lester
Chairman
Intra-Departmental Council
on Indian Affairs

Enclosure

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
PUBLIC HEALTH SERVICE
HEALTH SERVICES ADMINISTRATION
ROCKVILLE, MARYLAND 20852

INDIAN HEALTH SERVICE

Policy and Procedures in reference to P.L. 95-341

Purpose:

Report to the Task Force to Prepare the Report to the Congress on Implementation of the American Indian Religious Freedom Act of 1978 (P.L. 95-341)

Policy:

1. The policy of the Indian Health Service during the course of administering health services to American Indians and Alaskan Natives (referred jointly as Native Americans) is to protect and preserve the inherent right of all Native Americans to believe, express and exercise their traditional religions.

2. The Indian Health Service has continued to recognize the value and efficacy to traditional beliefs, ceremonies, and practices of the healing of body, mind and spirit. Faith is most often an integral part of the healing process and provides support for purposeful living. It is, therefore, the policy of the Indian Health Service to encourage a climate of respect and acceptance in which an individual's private traditional beliefs become a part of the healing and harmonizing force within his/her life.

Procedures:

1. The Indian Health Service Staff has been instructed to inform patients they have the freedom to practice native religion when desired by the individual, member of their family in case of minors, or when the patient's condition is such that he/she can not make the request.

2. When an Indian Health Service patient (guardian-family member) request assistance in obtaining the services of a native practioner, every effort will be made to comply. Such efforts might include contacting a native practitioner, providing space or privacy within a hospital room for a ceremony, and/or the authorization of contract health care funds to pay for native healer consultation when necessary.

3. Each Area Office of the Indian Health Service has the responsibility to consult with the Native Americans within their respected area as to the desire of each tribe in relation to their religious beliefs concerning Autopsy and

other Postmortem operations, disposition of dead body, disposal of a limb, disposal/burial of fetus, and comply in respect to the belief. Individual consent is required by the Indian Health Service before action on any of the above can be made.

4. Since a person's religious and native beliefs are often very personal, the patient's right to privacy must be respected in these matters. No Indian Health Service employee should be guilty of uninvited probing or interference in a patient's private beliefs. Many Indian patients prefer to say nothing about these native beliefs and practices. This is a right that must be respected.

5. Within this policy, Indian Health Service staff must continue to be aware of, sensitive to, and respectful of traditional beliefs and practices of the Native Americans. Procedures which would tend to interfere with, dilute, or modify these historic beliefs and practices must be avoided. Carefulness must be exercised so that Indian Health Service support, in whatever form it takes, does not become a wedge which creates dependency or wrests control from the chosen and honored native practitioners of ancient and effective healing practices. The goal is that there be respect and complimentary interface between the two systems of medicine and religion. Care must be taken that apparent Indian Health Service and federal beneficence does not become a means of destroying a system of healing which has both a long history and contemporary relevance.

Dr. Emery A. Johnson, M.D.
Assistant Surgeon General
Director, Indian Health Service

United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:
A64(022)

JUL 9 1979

Memorandum

To: Assistant Secretary for Indian Affairs

Attention: Susan Harjo, Legislation and Liaison

JUL 20 1979

Through: Deputy Assistant Secretary for Fish and Wildlife and Parks

From: Deputy Director, National Park Service

Subject: Consultation with Native American Traditional Religious Leaders (P.L. 95-341)

Attached is an interim report of the National Park Service's consultations to date with Native American traditional religious leaders regarding compliance with P.L. 95-341.

Although this is as much as we are able to furnish at this time, meetings are continuing and we will do a periodic compilation of the data received. This data will become part of the information base utilized in our ongoing planning and management activity. If the Task Force or your office should desire, we will be happy to share information on contacts and other activity as it becomes available.

This document should be considered as a supplement to the "Assessment of Compliance Requirements of P.L. 95-341 for the National Park Service" which we submitted to you on April 2, 1979.

Enclosure

Ira J. Hutchison

SUPPLEMENT TO
ASSESSMENT OF COMPLIANCE REQUIREMENTS OF
P. L. 95-341
FOR THE NATIONAL PARK SERVICE

July 10, 1979

Office of Management Policy

CONSULTATIONS

The consultation process employed by the National Park Service to identify issues to be addressed in complying with P.L. 95-341, American Indian Religious Freedom Act, drew from involvement with Native Americans that span a number of years and varieties of activities.

In the past, Devils Tower National Monument has been used for special ceremonies by the Sioux and Cheyenne Tribes. Badlands National Park, Mount Rushmore National Monument and Wind Cave National Park have allowed various Native American groups access for considered spiritual needs on several occasions. Aloha Week is held annually at Halemaumau Crater, Hawaii Volcanoes National Park.

Badlands, Theodore Roosevelt and Wind Cave National Parks have supplied buffalo for spiritual needs as a result of road kills, problem animals and surplus stock. (An interesting example is that Wind Cave National Park supplied the tip of a buffalo heart, liver and lungs to a medicine man in Oklahoma).

Many park areas have permitted Native Americans to gather certain plants for ceremonial purposes and have gathered and shipped certain plants to medicine men. Areas that collect fees have and will continue to waive fees for spiritual visits by Native Americans.

Pipestone has been obtained from Pipestone National Monument and given to local religious leaders. The National Park Service works cooperatively with the Navajo Indians in preserving the ruins at Canyon deChelly.

Planning and management activity for National Park Service areas always seeks to involve members of the concerned populace. Planning for Yosemite has involved members of the American Indian Council of Mariposa County. Planning for Organ Pipe Cactus National Monument has involved members of the Quitabaquito Tribe and Death Valley staff maintain contact with members of the Shoshone and Paiute Tribes.

As part of the consultation process, a key person from each National Park Service Region has been appointed to act as a regional coordinator for facilitation of efforts involving Native Americans. This coordinator will serve as a liaison between local, regional and Washington Office staff within NPS and will assure continuance of the consultation process beyond August, 1979.

NPS consultation efforts to date have also included several contacts with Susan Harjo, Special Assistant to the Assistant Secretary - Bureau of Indian Affairs and members of the Advisory Board of the Native American

Rights Fund. Jackson Moore of Cultural Resources, NPS, Washington Office, Roger Kelly, Historic Preservation, Western Regional Office and Bill Fields, Federal, State and Indian Assistance, Southwest Regional Office, represented NPS at 6 of the Task Force hearings held across the country. Robert Barrel, State Director for Hawaii, arranged for the Task Force hearing in Hawaii. He also, along with Edmund J. Ladd, Pacific Archeologist and Russell Apple, Pacific Historian, represented NPS at the hearing.

The specific assessment issues as presently set forth have been discussed with representatives from the following groups: Duckwater (Shoshone), Ely (Shoshone), Gashute, Pit River, Atsuwegi, Yavapai-Apache, Papago, Modoc, Piscataway, Upper Skagit, Nez Perce, Lummi, Chiricahua, Havasupai, Hualalapai and Kaibad-Paiute Tribes; Timba-Sha Shoshone Band Tribal Council, Morongo Indian Reservation (Cahuilla and Serrano Tribes), American Indian Council of Mariposa County, Native Hawaiians (3 groups), Native American groups from the Channel Islands (5 meetings).

All groups agree that the major issues have been identified. However, priority differs from tribe to tribe. In many cases, the tribal representatives pointed out that their responses were not necessarily definitive answers as the voice for the tribe as a whole. Several will consider the Assessment more fully, discuss it with their individual tribes and provide NPS with more detailed comment if they deem it necessary.

There was indication that some Native Americans do not wish to reveal sites or plants of religious significance because religious practices are secret and they feel that this is the best protection for the site. They would however, welcome more interaction regarding non-religious matters.

The majority agreed with the credentials of eminence concept, though some felt that there were no people left who would qualify. It was suggested that the terminology could be offensive to some and that it should therefore be amended to read:

> "by virtue of their experience and position within a Native American group, are recognized by their people to have authoritative knowledge of their group's cultural values and beliefs."

Consultation split about fifty-fifty regarding archeological research. Those against generally want sites preserved and undisturbed. They also felt that under no circumstances should graves be disturbed.

Those for research would like to have the research done by an anthropologist whom they are familiar with; would want to examine the proposal before it is initiated and have input before final decision regarding project is made. The Native Hawaiians would like to see some type of schooling funded for natives to become archeologist and anthropologists. There is also concern over control and ownership of artifacts.

Some of the participants (Native Hawaiians and Piscataway) indicated desire for preferential treatment in use of areas. They also felt that some sites should be restricted to natives only.

The groups in Hawaii indicated a preference for being referred to as "Native Hawaiian" instead of "Native Polynesian" or "Native American."

This initial effort did not allow a great deal of time for consideration of the issues. We will therefore, make further contact with those who wish to consider the issues more fully. We will also continue our initial and follow-up contacts with Native American traditional religious leaders as an integral part of the NPS planning/management process.

Ann J. Hutchison

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

[illegible] . 7 979

MEMORANDUM

TO: Assistant Secretary - Policy, Budget and Administration
Assistant Secretary - Energy and Minerals
Assistant Secretary - Fish and Wildlife and Parks
Assistant Secretary - Indian Affairs
Assistant Secretary - Land and Water Resources

FROM: Secretary

SUBJECT: Preparation of Final Report required by the American Indian Religious Freedom Act, P.L. 95-341

In order to meet the requirements of the American Indian Religious Freedom Act, there will be a two-week intensive work period, extending from July 9-20, during which time a work group will assess all agency reports, review all consultation transcripts, and prepare the draft final report for clearance. Please make available during this period your religious freedom task force representative and/or a skilled writer for this work group. The Assistant Secretary for Indian Affairs should be notified by June 29 of the name of your representative who will report to the work group in Room 6343 at 10:00 a.m. on July 9.

Thank you for your cooperation.

Cecil D. Andrus

THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D.C. 20201

5057

JUN 4 11 16 AM '79

MAY 31 1979

The Honorable Cecil Andrus
Secretary of the Interior
18th & C Street, N.W.
Washington, D.C. 20240

Dear Cece:

I am transmitting to you a brief report summarizing self-assessments undertaken by various HEW agencies in compliance with your guidance on implementation of the American Indian Religious Freedom Act. As indicated in the report, the Indian Health Service is still evaluating its policies and procedures. We expect a comprehensive evaluation from the Service by mid-June.

As you will see, there appears to be some confusion regarding the practices and policies that are relevant to the Act. I understand that representatives of your Department, HEW and Indian Leaders are meeting to clarify the specific concerns with regard to HEW programs.

Sincerely,

Joseph A. Califano, Jr.

Enclosure

American Indian Religious Freedom Act

Summary of HEW Agencies
Self-Assessments

Administration on Aging

The Administration on Aging may provide social and nutritional services to the Indian elderly under Title III and Title VI of the Older Americans Act. Title III is a State administered formula grant program, while Title VI is a new program that provides direct funding to Indian tribes and organizations as defined by the Indian Self-Determination and Education Assistance Act (P.L. 93-638).

The Older Americans Act provides for the acquisition, alteration, renovation or construction of facilities for use as multipurpose senior centers. However, Section 307(a)(14)(A)(iv) requires that a multipurpose senior center funded under Title III "will not be used and is not intended to be used for sectarian instruction or as a place for religious worship." This provision does not apply to programs under Title VI. However, to date there has been no appropriation of funds for the Title VI programs, thus all services currently provided to elderly Indians are governed by the provisions of Title III.

Rehabilitation Services Administration

The Rehabilitation Services Administration (RSA) indicates that all of its policies and procedures are in compliance with the American Indian Religious Freedom Act. It is the policy of RSA to modify traditional rehabilitation services to accommodate the religious convictions and practices of its service clientele.

Education Division

The Assistant Secretary for Education indicates that the only agency which falls under the purview of the American Indian Religious Freedom Act is the Institute for Museum Services. The Institute currently is evaluating its policies and procedures to determine compliance with the Act.

Social Security Administration

The self-assessment conducted by the Social Security Administration did not reveal any policies or procedures which need to be addressed. However, the agency is willing to continue its review if Native American religious leaders wish to provide specific examples of areas which should be examined.

Indian Health Service

The Indian Health Service currently is evaluating its policies and procedures to determine compliance with the Act.

ADDRESS ONLY THE DIRECTOR,
FISH AND WILDLIFE SERVICE

United States Department of the Interior

FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240

In Reply Refer To:
FWS/WA-3691

MAY 1 0 1979

Memorandum

To: The Secretary of the Interior

Through: Assistant Secretary for Fish and Wildlife and Parks

MAY 15 1979

From: Director, Fish and Wildlife Service

Subject: Review of the Fish and Wildlife Service Policy and Procedures for their Impact on American Indian's Religious Freedoms

The enactment of P. L. 95-341 (American Indian Religious Freedom) was motivated by the feeling that Congress, in passing laws such as the Endangered Species Act of 1973, the Bald and Golden Eagles Protection Act, and the Migratory Bird Treaty Act, may have failed to consider their impact on the religious practices of Native Americans and that the Fish and Wildlife Service, in implementing the laws, could have interfered with or denied Indian religious rights.

In compliance with section 2 of P. L. 95-341, the Fish and Wildlife Service has evaluated its policies and procedures in consultation with native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices.

Our efforts to comply with the Public Law included several meetings with special assistants (Susan Harjoe and Sue Hvalsoe) to the Assistant Secretary - Indian Affairs and corresponding and meeting with representatives from the Native American Rights Fund and the Advisory Board of Indian Leaders. Other efforts to identify conflicts include information gathered from our regional, area, and field offices. A copy of the questionnaire provided to the Regions is attached with the Regions' responses to the questions.

1. Eagle Regulations.

a. Potential problems. As authorized by the Eagle Protection Act, 16 U.S.C. 668-668d, the Service has issued regulations that restrict the taking, possession, and transportation of bald and

AMERICAN REVOLUTION BICENTENNIAL 1776-1976 golden eagles and any parts thereof. 50 C.F.R. 22.11. These regulations may have an impact on the use by Indians of feathers and other items in religious practices. However, this impact has been minimized by the regulations and policies discussed below.

b. Success stories.

(1) Indian religious permits. In accordance with the Eagle Protection Act, the Service's regulations authorize the issuance of permits to allow eagles to be taken, possessed, or transported for the religious purposes of Indians. 50 C.F.R. 22.22.

(2) Depository at Pocatello, Idaho. The Service has established a depository in Pocatello, Idaho, for storing eagles that are confiscated or accidentally killed. Upon request and through the religious permit system, eagles or parts of eagles are furnished to Indians for their religious ceremonies. The Service believes the eagle depository is a major success story involving our efforts to protect a resource and at the same time assist Native Americans in conducting their religious ceremonial activities.

The Advisory Board of Indian Religious Leaders made several comments on the Service's depository. Representatives from the Board were concerned that as individuals, any Indian could obtain eagle feathers from the Service. They recommend that feathers be issued to religious leaders within the tribe and individual Indians could acquire them through the religious leaders. Their rationale was that this would reduce the number of eagle permit applications, minimize issuance time, and help control illegally acquired feathers. Our present regulations require each applicant to attach a certification from a duly authorized official of the religious group that the applicant is authorized to participate in the tribal religious ceremonies. It is possible that permits are issued to deceptive applicants. However, the Service believes that under the First Amendment, eagle items should be available to any person who genuinely utilizes them for religious purposes, and for that reason is not willing to limit its distribution to religious leaders. To alleviate this problem it would seem appropriate for the tribal councils to provide the Service with the names and titles of certifying officials whom they think should represent their respective tribes in these matters.

The Advisory Board was also concerned that the heads and/or feet are removed from eagle skins which they receive after being processed in the National Wildlife Health Laboratory. Some Indian religious practices require the head and feet of the birds. A revised policy is being reviewed by the Service which will provide for maximum utilization of the carcasses for religious purposes and biological studies.

(3) Exemption for old items. As provided in the Eagle Act, 16 U.S.C. 668(a), the Service has issued regulations which allow the possession and transportation without a permit of bald eagle items that were lawfully acquired before June 8, 1940, and of golden eagle items that were lawfully acquired before October 24, 1962. 50 C.F.R. 22.2(a).

(4) Limitations on investigation and prosecution. The Secretary of the Interior's Policy Statement on Indian Use of Bird Feathers, dated February 5, 1975, permits American Indians to engage in the following activities without fear of Federal prosecution, harassment, or other interference.

(a) American Indians may possess, carry, use, wear, give, loan, or exchange among other Indians, without compensation, all federally protected birds, as well as their parts or feathers.

(b) American Indians who wish to possess bird feathers or parts to be worked on by tribal craftsmen for eventual use in Indian religious or cultural activities may transfer such feathers or parts to tribal craftsmen without charge, but craftsmen may be compensated for their work.

In addition, the Solicitor's Office reviews and must approve all investigations and prosecutions of Indians which do occur, in order to insure that such actions are not contrary to the Secretary's Policy Statement.

2. Migratory Bird Regulations.

a. Potential problems. As authorized by the Migratory Bird Treaty Act, 16 U.S.C. 703-711, the Service has issued regulations that restrict the taking, possession, and transportation of migratory birds and any parts thereof. 50 C.F.R. 21.11. As with the eagle regulations, the migratory bird restrictions may have an impact on the use by Indians of feathers and other items in religious practices. However, this impact has been significantly lessened by the regulations and policies discussed below.

143

b. Success stories.

(1) Authorized annual hunting. Subject to a number of Federal and State restrictions on methods, shooting hours and bag limits, designated species of migratory birds may be lawfully hunted during the open season each year. See 50 C.F.R. 20.11 - 20.26, 20.101 20.109. Also, subject to certain restrictions on time, custody, and marking, lawfully taken migratory game birds may be possessed and transported. 50 C.F.R. 20.31-20.44.

(2) Exemption for old items. As with eagles, the Service has issued regulations which allow the possession and transportation without a permit of migratory bird items that were lawfully acquired before the date their species became protected by the Migratory Bird Treaty Act. 50 C.F.R. 21.2(a).

(3) Limitations on investigation and prosecution. See paragraph b(4) of section entitled "Eagle Regulations."

c. Real problems. The Service's migratory bird regulations do not have any provision specifically authorizing permits for Indian religious purposes. However, the migratory bird treaties with Canada, Japan, and the Soviet Union allow taking of a number of species by Eskimos and Indians for subsistence purposes, and section 704 of the Migratory Bird Treaty Act allows the issuance of regulations that are compatible with the treaties. Convention for the Protection of Migratory Birds, August 16, 1916, United States-Great Britian (on behalf of Canada), art. II, paragraph 1,3,39 Stat. 1702, T.S. No. 628; Convention for the Protection of Migratory Birds and Birds in Danger of Extinction, and their Environment, Mar. 4, 1972, United States-Japan, art. III, para. 1(e), 25 U.S.T. 3329, T.I.A.S. No. 7990; (Cite to Soviet Treaty).

To the extent that subsistence includes religion, section 704 appears to authorize regulations allowing permits for taking, possession, and transportation for Indian religious purposes.

3. Endangered and Threatened Species Regulations.

a. Potential problems. In accordance with the Endangered Species Act, 16 U.S.C. 1531-1543, the Service has issued regulations which restrict the taking of endangered and threatened species in the United States, its territorial sea, and on the high seas. 50 C.F.R. 17.21(c), 17.31(a), 17.40-17.48. The Service's regulations also prohibit the possession or transportation of any endangered or threatened species that are taken unlawfully. 50 C.F.R. 17.21(d), 17.40(b)(1)(ii), 17.42(a)(1)(ii), 17.44(a)(1). A list of endangered and threatened species is found in 50 C.F.R. 17.11. In the case of certain species, the Service's restrictions may have an impact on Indian religious practices. However, this impact has been alleviated by the regulations and policies discussed below.

b. Success stories.

(1) Exception for taking by Alaska Natives. As provided in the Endangered Species Act, 16 U.S.C. 1539(e), the Service has issued regulations which allow the taking of endangered and threatened species by Indians, Aleuts, or Eskimos who are Alaska Natives residing in Alaska, if the taking is "primarily for subsistence purposes." 50 C.F.R. 17.5. To the extent that subsistence taking includes taking for religious purposes, the impact on Alaska Native religion of the Service's endangered and threatened species restrictions is mitigated by the native exemption.

(2) Exception for old items. In accordance with the Endangered Species Act, 16 U.S.C. 1538(b), the Service has issued regulations which allow possession, transportation, and other non-commercial activities consistent with the Act's conservation purposes that involve endangered or threatened species "... held in captivity or in a controlled environment on December 28, 1973." 50 C.F.R. 17.4. This exemption covers items from wildlife removed from the wild on or before December 28, 1973. Since many items used in Indian religious practices are from animals killed long before December 28, 1973, the Service's exemption for old items significantly lessens the impact on Indian religion of its restrictions on endangered and threatened species.

(3) Limitation on investigation and prosecution. See paragraph b(4) of section entitled "Eagle Regulations."

c. Real problems. With the possible exception of the authorization of subsistence taking by Alaska Natives, the Service's endangered and threatened species regulations do not allow taking by Indians for religious purposes. The reason for this is that the Endangered Species Act does not authorize any such regulation. However, since endangered and threatened species are, by definition, those which are presently or foreseeably in danger of extinction, 16 U.S.C. 1532(4), (15), 1533(a)(1), the Service does not recommend amendments to the Act to allow taking for religious purposes. The strain of this taking would only further jeopardize the existance of endangered and threatened species.

4. Marine Mammal Regulations.

a. Potential problems. In accordance with the Marine Mammal Protection Act, 16 U.S.C. 1371(a), 1372(a), the Service has issued regulations that restrict the taking of marine mammals. 50 C.F.R. 18.11. The Service has also issued regulations which prohibit the possession and transportation of marine mammals that are taken unlawfully. 50 C.F.R. 18.13(b). The marine mammals subject to the Service's regulations are polar bears, sea otters, walruses, dugongs, and manatees. 50 C.F.R. 18.3. Polar bears and walruses may be of religious significance to Alaska Natives. However, the U.S. populations of these species occur only in Alaska and adjacent waters, and any adverse impact the Service's restrictions may have on Alaska Native religion appear to be minimized by the exceptions described below.

b. Success stories.

(1) The native exemption. As provided by the Marine Mammal Act, the Service has issued regulations allowing Alaskan Indians, Aleuts, and Eskimos to take non-depleted species in a non-wasteful manner for subsistence purposes. 50 C.F.R. 18.23. The scope of this native exemption is presently the subject of litigation. See People of Togiak v. United States, No. 77-0264 (D. D.C. Apr. 3, 1979). However, to the extent that subsistence taking includes taking for religious purposes, the impact on Alaska Native religion of the Service's marine mammal restrictions is mitigated by the native exemption.

(2) Exception for old items. In accordance with the Marine Mammal Act, 16 U.S.C. 1372(e), the Service has also issued regulations which provide that the above restrictions do not apply to any marine mammal taken before December 21, 1972. 50 C.F.R. 18.14. As was pointed out with respect to endangered and threatened species, since many marine mammal items used in Alaska Native religion are from animals killed long before December 21, 1972, the Service's exemption for old items significantly lessens the religious impact of its marine mammal restrictions.

5. Regulations Restricting Access and Activities on Lands Administered by the Service.

a. Potential problems. In accordance with the National Wildlife Refuge System Administration Act and other statutory authority, 16 U.S.C. 460k, 668dd(c), the Service has issued regulations which restrict public entry into fish hatchery areas and areas included within the National Wildlife Refuge System. 50 C.F.R. 26.21(a), 70.4(a). The Service's regulations also generally prohibit any disturbing of animals or plants within these areas. 50 C.F.R. 27.51, 70.4.

These restrictions may have an impact on Indian religious practices. For example, historical and archelogical surveys during refuge master planning have revealed that many areas contain Indian burial sites as well as cemeteries still in use. Also, the Advisory Board of Indian Leaders pointed out that vegetation used for ceremonial purposes is often located on lands administered by the Service.

b. Success stories. For areas within the Refuge System, the Refuge System Administration Act authorizes the Service to issue regulations that "... permit the use of any area within the System for any purpose . . . and (also) access whenever (the Director) determines that such uses are compatible with the major purposes...." for which the area was established. 16 U.S.C. 668dd(d)((1)(A). Pursuant to this authority, the Service has issued regulations authorizing permits for access to refuge areas and for collection of plants thereon. 50 C.F.R. 26.22(b), 27.51.

6. Indian Fishing Regulations.

a. Potential problem and success story. Another conflict identified by the Service involves the Service's enforcement of the Department's fishing regulations for the Klamath River in California and the use of salmon for ceremonial purposes by the local Indians. However, this problem appears to be solved, since the Department has recently published a revision of the regulations (March 20, 1979) that provides, among other things, the latitude for Native Americans to catch fish for religious ceremonial activities.

Lynn A. Greenwalt

Attachments

Reading File

Nov. 3, 1978

In Reply Refer To:
FWS/WA-11181

Memorandum

To: Regional Directors, Regions 1, 2, 3, 4, 5, 6, and
Alaska Area Director

From: Associate Director, Fish and Wildlife Service

Subject: Compliance with Public Law 95-341 (American Indian Religious Freedom)

The purpose of P. L. 95-341—American Indian Religious Freedom—is to insure that agencies' policies and practices are brought into compliance with the constitutional injunction against abridging the free exercise of religion.

The Act was motivated by the feeling that Congress, in passing such laws as the Wilderness Act the Endangered Species Act, the Bald and Golden Eagles Protection Act, and the Migratory Bird Treaty Act had neglected their impact and that the executive agencies in carrying out the responsibilities had interfered with or denied the religious rights of native Americans.

Attached for your information is a copy of the Public Law and a press release from the White House.

In order that we may comply with this legislation, it is important to identify any real conflicts between our fish and wildlife laws, regulations, or policies and the requirements for American Indians to practice their religious freedom.

To insure that we meet a very tight deadline on this matter, it is essential to receive comments by December 1, 1978. Please distribute this information request to the Area Offices and SAC Districts and urge their prompt response. The Office of Wildlife Assistance is responsible for developing the lead in this assignment and if you have any questions contact John Bardwell (632-2202).

*1. List specific situations where a controversy has occurred regarding native American religious practices and Service involvement.

a. Were Service restrictions required for the management of the natural resource?

b. Was the impediment a result of a law, regulation, or policy? Briefly discuss including the scope of the specific conflict.

2. List religious ceremonial places or structures which exist on Service controlled lands and the tribe or tribes (religious groups) affected.

3. List tribes in your area with which you have had contact and the species which were the religious subject of your contact.

4. List any other tribes in your area which you are aware of but have not had contact with.

5. Identify communication problems, if any, with native American religious leaders. Were the problems resolved? If so, how? If not, explain.

6. List any specific "success" stories in respect to Service cooperation with native American religious practices. Include any measures undertaken to provide flexibility within Service legal or policy grounds to be responsive to requirements of native American religious needs.

(SGD.) HARVEY K. NELSON

Attachments

* If you are unsure of whether the practices are "religious" or otherwise "cultural" identify them and note your questions.

cc:
Directorate reading file
DD-Chron. File
OFA

FWS:WA:JBardwell/ihb 11/2/78

[illegible]

UNITED STATES GOVERNMENT

Memorandum

U.S. FISH & WILDLIFE SERVICE
Region 2, Albuquerque, New Mexico 87103

TO : Director, FWS, Washington, D.C. (RF)

DATE: November 27, 1978

FROM : ~~Assistant~~ Regional Director, FWS, Region 2 (RF)

SUBJECT: Compliance with Public Law 95-341 (American Indian Religious Freedom)

In response to Harvey Nelson's November 3 request, we are providing the following information for this Region.

1. We are not aware of any situation where a controversy has occurred.
2. There are no ceremonial places or structures on Service controlled lands in Region 2.
3. We (LE) have been in contact with all tribes in this Region re eagles.
4. We are not aware of any tribes in this Region that have not had contact.
5. There are no known communications problems.
6. Our enforcement officers probably distribute more eagle parts (from central depository in Idaho) for religious ceremonial purposes than any other Region. Needs are filled on an "as available" basis.

Gordon W Hansen

CONSERVE AMERICA'S ENERGY

Save Energy and You Serve America!

WA

UNITED STATES GOVERNMENT

memorandum

DATE: NOV 2 - 1978

REPLY TO ATTN OF: Acting Regional Director, Twin Cities, MN (MBAC)

SUBJECT: Compliance with Public Law 95-341

TO: The Director, FWS, Washington, D.C. (AFW) (FWS/WA-11181)

We have not identified any real conflicts between our fish and wildlife laws, regulations, or policies and the requirements for American Indians to practice their religious freedom.

Historical and archeological surveys during refuge master planning have indicated that most areas contain Indian burial sites including an active cemetery. However, there are no apparent conflicts over any of these sites.

We have issued 41 eagle feather loan agreements within this region. No other restrictions have been imposed.

W. Ellis Klett

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

OPTIONAL FORM NO. 10
(REV. 7-76)
GSA FPMR (41 CFR) 101-11.6
5010-112

UNITED STATES GOVERNMENT

memorandum

U. S. FISH AND WILDLIFE SERVICE

1011 E. TUDOR RD.
ANCHORAGE, ALASKA 99503
(907) 276-3800

FWS/LE LAW 15

TO: Director (WA), WDC,

FROM: Acting Area Director, Alaska,
Anchorage, Alaska

DATE: November 20, 1978

SUBJECT: Problems with Public Law # 95-341 in Alaska

To date we have not had any conflicts here in Alaska between the Service and Native groups over the use of wildlife for religious purposes. We can only recall three requests from Natives for eagle feathers. Two of these were filled and one is a recent request that has not been processed at this time.

The State has already had problems; the moose taken out of season for a potlatch. We believe this case is before the State Supreme Court. In light of P. L. 95-341, and depending on what happens in the State case, serious problems could develop in the future.

Harry L. Hickman

UNITED STATES GOVERNMENT

memorandum

U.S. FISH AND WILDLIFE SERVICE
ONE GATEWAY CENTER
SUITE 700
NEWTON CORNER, MASSACHUSETTS 02158

TO: Director, FWS, Washington, D.C. (AFW) (WR)

FROM: Regional Director, FWS, Region 5

DATE:

SUBJECT: Compliance with Public Law 95-341 (American Indian Religious Freedom)

Please find attached copies of Delmarva and Harrisburg Area Office replies.

L.E. Districts 12 and 13 indicated there had been no contacts or controversies involving American Indian Religious Freedom. L.E. Districts 11's response is included in John Green's response from the Delmarva Area Office.

Howard N. Larsen

Attachment

UNITED STATES GOVERNMENT

memorandum

DATE: November 28, 1978

REPLY TO ATTN OF: Area Manager, Delmarva Area Office

SUBJECT: Public Law 95-341 (American Indian Religious Freedom)

TO: Regional Director (ARW)
Attn: John Peterson

This is in response to Mr. Harvey K. Nelson's memo of November 3, 1978. We have reviewed the programs in the Delmarva Area and we are not aware of any conflicts or controversy between fish and wildlife laws, policy, or regulations and American Indian religious freedom.

We have three Indian Tribes in our area all in Virginia. These are the Pamunkey Tribe, Mattaponi Tribe, and the Chickahominy Tribe. The Pamunkey and Mattaponi are located on reservations (estimated at 200 acres and 50 acres in size, respectively) near West Point, Virginia. The Chickahominy is not an organized Tribe, evidently it is just a recognized group living along the Chickahominy River southeast of Richmond. None of the Tribes fall under the jurisdiction of the BIA.

Our Fishery Assistance Office at Gloucester Point, Virginia has participated with members of the Mattaponi Tribe and Icthyology Associates in gathering shad eggs for planting in the Susquehanna River. I understand the Tribe also takes shad spawn and replants them on the reservation.

Other FWS involvement with the Pamunkey Tribe has been by our LE people. The Pamunkey Chief has a valid Endangered Species Permit, renewed annually, to maintain a quantity of Eagle feathers used in their religious ceremonies. These feathers are on loan to him under permit. No problems have been encountered with the Tribe over the permit. LE conducted an audit 2 years ago in regards to the permit and found everything in order.

Both the Pamunkey and the Mattaponi Tribes are exempt from Virginia State hunting laws. They are required to purchase federal migratory duck stamps and do so. The Pamunkey's also operate a commercial waterfowl day hunt on the Pamunkey River. The Pamunkey chief is required to pay rent to the Governor of Virginia amounting to one male horned whitetailed deer annually. (A little bit of trivia there.)

This is the extent of our involvement with Indian Tribes in this Area. I have discussed the above with SAC Kensinger and SRA Davenport. It was agreed that I would include the data relative to LE involvement in my report.

John D Green

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

OPTIONAL FORM NO. 10
(REV. 7-76)
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT
memorandum

DATE: November 13, 1978

REPLY TO ATTN OF: SAC, L.E., District 12, Lawrence, N.Y. 11559 FWS/WA-11181

SUBJECT: Compliance with Public Law 95-341 (American Indian Religious Freedom)

TO: Regional Director, Region 5, Boston, Mass.

District 12 reports no controversy occurring involving the Service's law enforcement activities and native American religious practices.

ARW
REC'D
NOV 27 1978
REG. 5

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

UNITED STATES GOVERNMEN

memorandum

WA

DATE: November 22, 1978

REPLY TO ATTN OF: Regional Director, FWS, Atlanta, Ga.

SUBJECT: Compliance with Public Law 95-341 (American Indian Religious Freedom)

TO: Associate Director, Fish and Wildlife Resources, Washington, D.C.

In response to your memorandum (FWS/WA-11181) dated November 3, 1978, no Area Office or SAC District within Region 4 reports any conflicts between fish and wildlife laws, regulations, etc. and the religious freedom of American Indians.

SAC, District 8, did, however, refer to technical assistance offered the Choctaws in establishing a Wildlife Law Enforcement Program on their reservation. Also, SAC, District 9, pointed to assistance given in the locating of eagle feathers and parts to be used in religious ceremonies (copies of these two responses attached).

Kenneth E. Black

Attachment

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

OPTIONAL FORM NO. 10
(REV. 7-76)
GSA FPMR (41 CFR) 101-11.6
5010-111

UNITED STATES GOVERNMENT

memorandum

DATE: November 14, 1978

REPLY TO ATTN OF: SAC Graham, L.E. District 9, Atlanta, Georgia

SUBJECT: Compliance with Public Law 95-341 (American Indian Religious Freedom)

TO: Public Affairs Officer, Atlanta, Georgia

The following information is submitted in response to the Acting Regional Director's memorandum dated November 6.

Questions listed on page 2 of Mr. Nelson's November 3 memorandum are addressed in order.

1. No knowledge of such situations occurring in L.E. District 9.
2. More properly answered by land management divisions.
3. Lower Creeks. Assisted tribal members to obtain eagle feathers for religious purposes.
4. Not aware of any.
5. None.
6. Assistance with recovery and distribution of eagle parts.

Charles E. Graham

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

OPTIONAL FORM NO. 10
(REV. 7-76)
GSA FPMR (41 CFR) 101-11.6
5010-114

UNITED STATES GOVERNMENT

memorandum

DATE: November 9, 1978

REPLY TO ATTN OF: SAC, District 8, L.E. New Orleans, La.

SUBJECT: Compliance with Public Law 95-341 (American Indian Religious Freedom)

TO: Regional Director, FWS, Atlanta, Georgia

In response to Mr. Lankford's memo of November 6, 1978 and Mr. Nelson's memo of November 3, 1978 the following are answers to questions concerning this subject:

1. None.
2. None.
3. None.
4. None.
5. None.
6. The only Indian Reservation (Choctaw) in LE District 8 is located near Philadelphia, Mississippi. The SAC Office was contacted by the tribe to assist them in establishing a Wildlife Law Enforcement Program on the Reservation. We corresponded and met with the Choctaws in assisting them with this project. Their "Religious" or "Cultural" customs have never conflicted with the laws enforced by the service in this district.

I have also reviewed Public Law 95-341 and report no problems with compliance in this district.

David Hall

DAVID L. HALL

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

U.S. Government Printing Office [illegible]

OPTIONAL FORM NO. 10
(REV. 7-76)

RI 53

UNITED STATES GOVERNMENT

Memorandum

FISH AND WILDLIFE SERVICE
PORTLAND, OREGON

11-27

TO : Associate Director - Fisheries - Washington, D.C.

DATE: November 24, 1978

FROM : Acting Regional Director

SUBJECT: Response to Inquiry Regarding Compliance with Public Law 95-341 (American Indian Religious Freedom)

Listed below is a summation of the responses received on the above subject:

HAWAII

1. No known controversy has occurred in Hawaii with respect to aboriginal religious practices or rights.

2. Hawaiian Islands National Refuge. Nihoa Island - Island was inhabited 1200 to 1300 A.D. Many stone structures (house foundations and ceremonial sites) are still visible.

   Necker Island - Several stone images and statues were collected by early exploring parties. Several are on display in the Bishop Museum in Honolulu. Also, numerous temple sites and low terraces are still discernable. There is interest in these islands for expansion of the commercial fishery and it is conceivable that certain individuals might use ancestral religious rights as a vehicle to gain access to these islands for ulterior purposes. If necessary refuge regulations could be adjusted to provide for religious visits as long as the endangered species and other renewable resources are adequately protected. Under any circumstances the number of people who would want to visit these islands for legitimate religious/cultural purposes would be few if any since there is no recent (700 years) tradition for this.

3. None

4. None

5. None

6. There has been no FWS interaction with ethnic Hawaiians in this area.

SACRAMENTO AREA OFFICE

There are no known serious conflicts in regards to the above subject. However, conflicts could arise in the future on the Klamath River in regard to enforcing fishing regulations.

This past fishing season, an in-season regulation adjustment, closing all fishing below Highway 101 bridge was put into effect. Some Indians said this interfered with their right to take fish for ceremonial purposes. Future regulations should probably be written to provide for this need.

In addition, at Pyramid Lake, the Endangered Species Act may conflict with the religious needs of cui-ui and Lahontan Cutthroat trout by Indians. We have not discussed this with the Tribe nor have they expressed to us their religious beliefs in regard to cui-ui and/or Lahontan Cutthroat trout.

LAW ENFORCEMENT - PORTLAND

The taking of bald eagles without permits by Indians in Northwest Washington is a continual problem.

A definite success story is the distribution of eagles, eagle parts, and other raptor feathers to Indians throughout the United States for religious purposes. During FY 1978, 528 shipments were forwarded and permits issued to Indians by the Pocatello Supply Depot, under contract to Law Enforcement. The shipments included 221 whole golden and bald eagles, and 1,023 parts of eagles and raptors (tails, wings, claws etc.). Similar shipments have been made during the previous four years.

TURNBULL NWR

1. There have been no controversies regarding Native American Indian religious practices.
2. No religious ceremonial places or structures are present.
3. Have not contacted or been contacted by any Tribe.
4. Colville Tribe and Kalispill Tribe
5. Have had no reason to contact local Tribes regarding religious matters.
6. None

NISQUALLY NWR

1. Local Tribes have expressed no concern about religious freedom being inhibited by FWS.
2. The Medicine Creek Treaty Tree is located adjacent to refuge lands. We plan a Medicine Creek Treaty Tree interpretive exhibit on refuge dike trail.
3. Have had contact with the Nisqually Tribe, but nothing on religious practices was discussed.
4. Puyallups, Steilacooms and Squaxin
5. No problems
6. NA

COLUMBIA NWR

1. No known controversies have occurred involving Native American religious practices and FWS involvement.
2. No known religious ceremonial places or structures exist on the refuge.
3. The Yakima, Spokane and Colville Indian Reservations are located within 150 miles of the refuge, but no contact has been made with any leaders of the Reservations.

OLYMPIA AREA OFFICE

This office has no fishery problem regarding Indian ceremonial fishing since most Tribes require the Indians to personally catch ceremonial salmon.

BOISE AREA OFFICE

Negative report

Bill Meyer

William H. Meyer

FORM 3-266 **U.S. FISH & WILDLIFE SERVICE**	**FAXFORM**		
TO: Director, USFWS, Washington, D.C. (AFW)	**DATE** 12/15/78	**TIME**	
FROM: Regional Director, Region 6, Denver, CO	☐ **Deliver on regular mail run** ☐ **Call to have picked up**		
SUBJECT: Complaince with Public Law 95-341 (American Indian Religious Freedom) LAW 15			

In response to your faxform dated December 12, 1978, we are providing the following:

1. List specific situations where a controversy has occurred regarding native American religious practices and Service involvement.

    a. Were Service restrictions required for the management of the natural resource?

    b. Was the impediment a result of a law, regulation, or policy? Briefly discuss including the scope of the specific conflict.

Numerous investigations and prosecutions have been conducted in Region 6 involving the illegal taking and sale of eagle feathers and migratory bird feathers which have religious significance to many American Indians. In none of these cases was the issue of religious freedom raised by the subject of the investigation. Nor have we been able to identify specific or general situations in Region 6 where a controversy has occurred regarding native American religious practices and Service involvement.

2. List religious ceremonial places or structures which exist on Service controlled lands and the tribe or tribes (religious groups) affected.

No religious ceremonial places or structures exist on Service controlled lands in Region 6.

3. List tribes in your area with which you have had contact and the species which were the religious subject of your contact.

We have had no contact with any tribes involving religious subjects, except for the issuance of permits to possess eagle parts shipped from the Pocatello, Idaho depot. These contacts involved individual Indians rather than tribal entities.

Faxform 1 of 2

4. List any other tribes in your area which you are aware of but have not had contact with.

- Montana
  - Blackfeet
  - Crow
  - Salish
  - Kootenai
  - Gros Ventre-Assinibone
  - Assinibone
  - Sioux
  - Northern Cheyenne
  - Chippewa
  - Cree
- Wyoming
  - Arapaho
  - Shoshone
- North Dakota
  - Mandan-Hidatsa
  - Arikara
  - Devils Lake Sioux
  - Chippewa
- Kansas
  - Iowa
  - Kickapoo
  - Potawatomi
  - Sac
  - Fox
  - Mesquakie
- Nebraska
  - Omaha
  - Santa Sioux
  - Winnebago
- South Dakota
  - Sioux
  - Santa Sioux
  - Oglala Sioux
  - Sisseton Sioux
  - Wahpeton Sioux
  - Yankton Sioux
- Colorado
  - Mouache Ute
  - Capote Ute
  - Weminuche Ute
- Utah
  - Goshuti
  - Ute

5. Identify communication problems, if any, with native American religious leaders. Were the problems resolved? If so, how? If not, explain.

We have had no communication problems with American Indian religious leaders.

6. List any specific "success" stories in respect to Service cooperation with native American religious practices. Include any measures undertaken to provide flexibility within Service legal or policy grounds to be responsive to requirements of native American religious needs.

The only "success" story we can provide in respect to Service cooperation with native American religious practices is that we do not have nor have we had any complaints, controversy or problems in this area.

Faxform 2 of 2

UNITED STATES GOVERNMENT

memorandum

U.S. FISH AND WILDLIFE SERVICE

ONE GATEWAY CENTER
SUITE 700
NEWTON CORNER, MASSACHUSETTS 02158

TO: Associate Director, Fish and Wildlife Resources, FWS, Washington, DC

FROM: Acting Assistant Regional Director Federal Assistance, FWS, Newton Corner, MA

DATE: December 1, 1978

SUBJECT: Compliance with Public Law 95-341 (American Indian Religious Freedom)

In response to the above subject matter, Federal Assistance has had no conflicts or involvement with the American Indians and, therefore, submit no comments.

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Regional Director, Newton Corner (ARW)

DATE: November 28, 1978

FROM : Area Manager, Harrisburg Area Office

SUBJECT: Compliance with P.L. 95-341 (American Indian Religious Freedom)
(Associate Director Nelson's memo of November 3, 1978)

This memo serves as a confirmation of the telphone conservation of November 27, 1978, with John Peterson and Dick St. Pierre of my staff. Our response is for Area II only and conforms to the six points raised in Mr. Nelson's memo.

1. List specific situations where a controversy occurred regarding native American religious practices and Service involvement.

The Cayugas of the Seneca Nation have named Montezuma NWR and other Federal lands in central New York as historic hunting and fishing grounds which they wish to acquire to satisfy questionable treaty commitments. DOI Solicitors have advised us that the claim is groundless, but may end up in a financial settlement.

2. List religious ceremonial places or structures which exist on Service controlled lands and the tribe or tribes (religious groups) affected.

None

3. List tribes with which we have had contact and the species which were the religious subject of your contact.

Fishery Assistance in Warren, Pennsylvania, and Wildlife Assistance in Albany, New York, have had contact with the Seneca Nation - but not on matters of religious importance. Several years ago the Seneca Nation asked about the legality of keeping eagle feathers for ceremonial purposes.

ARW
REC'D
[illegible] 1978
REG. 5
✓

5010-110

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

4. List any other tribes in your area which you are aware of but have not had contact with.

Tribe	Reservation	Location
Iroquois		
Mohawk	St. Regis	Niagara Co., NY
Oneidas	Onondaga	Onondaga Co., NY
Onondaga	Onondaga	Onondaga Co., NY
Cayugas	Cattaraugus	Cattaraugus Co., NY
Senecas	Allegany	Cattaraugus Co., NY
	Cattaraugus	Cattaraugus Co., NY
	Tonawanda	Genesee Co., NY
Tuscaroras	Tuscarora	Niagara Co., NY
Algonquin		
Poospatuck	Poospatuck	Suffolk Co., NY
Shinnecock	Shinnecock	Suffolk Co., NY

5. Identify communication problems. . ..

None

6. List any specific "success" stories. . ..

None

Please let us know if additional information is needed.

*1. List specific situations where a controversy has occurred regarding native American religious practices and Service involvement.

a. Were Service restrictions required for the management of the natural resource?

b. Was the impediment a result of a law, regulation, or policy? Briefly discuss including the scope of the specific conflict.

2. List religious ceremonial places or structures which exist on Service controlled lands and the tribe or tribes (religious groups) affected.

3. List tribes in your area with which you have had contact and the species which were the religious subject of your contact.

4. List any other tribes in your area which you are aware of but have not had contact with.

5. Identify communication problems, if any, with native American religious leaders. Were the problems resolved? If so, how? If not, explain.

6. List any specific "success" stories in respect to Service cooperation with native American religious practices. Include any measures undertaken to provide flexibility within Service legal or policy grounds to be responsive to requirements of native American religious needs.

Harvey K. Nelson

Attachments

* If you are unsure of whether the practices are "religious" or otherwise "cultural" identify them and note your questions.

cc:
Directorate reading file
DD-Chron. File
OFA

FWS:WA:JBardwell/ihb 11/2/78

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
P. O. Box 2417
Washington, D. C. 20013

1700
MAY 10 1979

Honorable Forrest J. Gerard
Assistant Secretary of Interior
Washington, D. C. 20240

Dear Mr. Gerard:

This is in response to Secretary Andrus' January 26, 1979, letter regarding Agency action on evaluating policies and procedures in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices.

The Forest Service has had a continuing policy to seek out and involve individuals and groups in the development of management direction. Over the years local managers have worked closely with representatives of Indian groups in the planning and decisionmaking process. This input has been given full consideration in the formation of policies and procedures, both on a national and a local basis. With the passage of the American Indian Religious Freedom Act a new awareness of the needs of the Native American is occurring within the Agency.

As a result of the Act, this Agency has taken the following actions:

> September 13, 1978 - An informal task group began developing Agency policy. Coordination on key issues began with the Department representative for Indian Affairs.
>
> November 14, 1978 - A task force composed of representatives of Civil Rights, Recreation, Lands and Land Management Planning Staffs was established to implement the Native American Religious Freedom Act. The objectives of this group, chaired by a member of the Civil Rights Staff, were to recommend policies and procedures for decisions and to assist Washington Office Staffs, Regional Foresters, Station Directors and Area Directors in reviewing their policies, directives and procedures as required by the Act.

November 14, 1978 - A letter was sent to the field establishing interim policy for implementation of the American Indian Religious Freedom Act. Line management officials, at all levels, were informed that until further direction is available, the following direction will apply. "In the preparatory stage of land management planning, native traditional religious leaders will be notified of all public involvement activities and invited to provide input. If an issue concerning Indian religious freedom is identified, the cultural resource overview for the forest plan should provide substantive background on the traditional Indian religious practices within the planning area. When examination and consultation determine a need to protect or preserve certain lands or sites, this will be accomplished in and through the land management plan.

Each application by traditional Native Americans to use National Forest System lands for religious purposes shall be carefully considered. The careful consideration shall include those instances where a request involves an area under restrictions which would normally preclude the activity. A typical example of this situation would be a request to enter an area subject to fire closure. To the extent the proposed use or activity is considered consistent with existing laws and regulations, a special use permit may be issued."

February 15, 1979 - To assist in complying with the Act, Forest Service task force members met with representatives of the American Indian Law Center and the Native American Rights Fund Committee to have a background briefing, to share ideas, make suggestions, and to gain awareness of the Native Americans' religious issues. As a result of this meeting, it was determined that the Native American Rights Fund Committee will be available to provide awareness sessions at the request of the Regional Foresters. The Native American Rights Fund Committee indicated its interest in bringing local traditional religious leaders to these sessions to assist in providing local perspective.

March 12, 1979 - A letter was sent to Regional Foresters, Station Directors and Area Directors informing them of the availability of the Committee to participate in awareness sessions, and requesting that they make their own arrangement, if sessions are desired.

April 2, 1979 - A meeting was held at the Department of the Interior with members of the Bureau of Indian Affairs, other Agencies' and Departments' Task Force members. The purpose of this meeting was to discuss preparation of the American Indian Religious Freedom Act Implementation Report and to meet with the Native American traditional religious leaders. As a result of the above meeting, the Forest Service is seeking to meet with the Native American Rights Fund Committee to further discuss issues and opportunities that may be encountered in implementing the Act.

April 23, 1979 - The Forest Service task force met to compile field reports on the affects of Forest Service policies and procedures on the American Indian Religious Freedom Act. This review revealed that the agency has not identified any policies or procedures which have a negative affect on or will result in any abridgement of the religious freedom of the Native Americans. In our consultation with representatives of the Native American Rights Fund, they were of the opinion that some of our permit requirements, closure orders, cultural resource management program as well as other areas may infringe upon Indian Religious Freedom.

We are planning to continue the Agency review of these potential conflict areas in close cooperation with traditional religious leaders or their representatives to assure the protection and preservation of Native American religious rights and practices.

If you have any question concerning the information provided, we will be happy to respond. Our Agency representative, John Leasure can be reached at 447-8618.

Sincerely,

Jerome A Miles

JEROME A. MILES
Deputy Chief

United States Department of the Interior
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

IN REPLY REFER TO:
8100 (370)

APR 12 1979

Guy R Martin 4/17

Memorandum

To: Assistant Secretary, Indian Affairs

Through: Assistant Secretary, Land and Water Resources

From: Director, Bureau of Land Management

Subject: Preliminary Evaluation of Issues Related to Compliance With the American Indian Religious Freedom Act, P.L. 95-341

I. INTRODUCTION. The American Indian Religious Freedom Act (P.L. 95-341) requires all Federal Agencies to evaluate their policies and procedures in order to determine possible impacts upon the traditional religious practices and beliefs of Native Americans. Those policies and procedures which appear to infringe upon such religious practices and beliefs must be identified, and recommendations regarding the need for either internal adjustments or changes in legislation must be made.

The Cultural Resource Program within the Bureau of Land Management's (BLM's) Division of Recreation is coordinating the BLM's efforts in complying with the requirements of P.L. 95-341. In order to assess the requirements necessary for the Bureau to comply with P.L. 95-341, the following steps are currently being carried out:

1. Review of relevant BLM policies and procedures for impact on Native American religious freedoms.

2. Field level review of present or potential conflicts with Bureau policies, procedures, and operational practices, and the intent of P.L. 95-341.

3. Development of recommendations for resolving conflicts between Bureau policies and procedures and the protection of Native American religious rights.

4. Consultation with Native traditional religious leaders and Native American groups and organizations.

Based on initial comments submitted by the various BLM Divisions and from the BLM State Offices, it is possible to identify some general issues and concerns, several specific present or potential conflicts, and general recommendations relevant to the intent of P.L. 95-341.

The following represents a preliminary evaluation only. The purpose is to isolate the major areas of concern in order that the BLM can better approach the responsibility of identifying the critical issues and of determining what specific changes are necessary to ensure that Native Americans are guaranteed the right of religious expression.

The issues raised below point out that any evaluation of matters relevant to P.L. 95-341 must take into account the extreme and unquestionable complexity of the situation. There is no such thing as one Native American religion; there are hundreds of Native American "religions" (i.e., systems of belief and practices), each with its own dynamic and often unique character. Any attempt to make generalizations regarding Native American religions or to use such generalizations with respect to conducting evaluations of Federal policies and procedures is to reduce this situation to a meaningless simplicity. In order to be useful and meaningful, an evaluation of the relationship between Federal policies and procedures and the intent of P.L. 95-341 must be an ongoing process and must be coupled with the identification, by traditional Native American religious leaders, of specific areas of concern. Only through a continuing program of evaluation can sound recommendations be made regarding changes which may be necessary to ensure Native American religious freedoms.

II. GENERAL ISSUES AND RECOMMENDATIONS.

A. Issues.

1. A common theme throughout many of the comments received has been the difficulty in evaluating BLM policies and procedures in light of P.L. 95-341 without a clear knowledge of the nature of Native American religions at each local level and the explicit concerns of specific Native American groups who may have religious interests related to public lands. It is impossible to identify conflicts and critical issues without direct input from Native American leaders and groups.

2. The Native American community does not necessarily view their concerns as a series of isolated conflicts (also see No. 3 below). The various specific concerns often relate to such central matters as the consideration of Native American views in the BLM's inventory, evaluation, and planning systems.

3. Defining and setting parameters on what constitutes Native American religion or defining such terms as "sacred" and "ceremonial" may prove difficult. With most Euro-American culture groups, it is often quite easy to separate what might be considered "religious" activities from other more "secular" behaviors. With many Native American groups, it

is difficult to isolate religious or sacred concerns from other cultural activities. They are often inextricably linked together and form a single system of belief and practice. In addition, there are problems of tribal differences in belief and organizational differences in belief and practice. Defining, integrating, and establishing parameters on these beliefs and practices will be an extensive, ongoing, and controversial process.

4. Related to No. 3, it may, in some cases, be an infringement upon religious belief for certain Native Americans to divulge the tenets of their religion. In such cases, it will be difficult to identify sacred sites and areas, since the act of doing so would be an infringement itself.

5. The BLM presently lacks the capability needed to conduct a comprehensive and ongoing evaluation of matters relevant to Native Americans.

B. Recommendations. Related to some of the issues presented above, the following general recommendations are offered:

1. Develop an ongoing Federal program to evaluate the relationship between Native American religious beliefs and practices and Federal policies and procedures.

2. Identify all Native American groups who have a direct religious interest in lands administered by the Federal land managing agencies. Identify the tribal and/or religious leaders of each group, so as to facilitate direct communication and consultation with them.

3. Fully integrate the consideration of socio-cultural values into all Federal land managing agencies' inventory, evaluation, and planning systems and encourage participation at the local level by Native Americans, as well as other ethnic and public interest groups, so as to provide direct input regarding their interests and concerns.

4. Develop an educational program in order to provide information to Federal Agencies regarding Native American concerns.

5. Establish and maintain cooperation between Federal Agencies regarding matters dealing with Native Americans.

III. SPECIFIC ISSUES AND RECOMMENDATIONS. The following presents some specific issues and recommendations which have been identified as relevant to P.L. 95-341.

1. Native Americans are often reluctant to identify and make public information related to sacred sites, areas, or objects, or to the set of beliefs and practices related to them. An explicit exemption from the Freedom of Information Act (5 U.S.C. 552) is needed for data related to sacred areas in order to allow the BLM and other Federal Agencies to offer Native Americans some assurance that such information will remain confidential.

2. The Endangered Species Act of 1973 (16 U.S.C. 1531; P.L. 93-205) provides for the conservation of endangered and threatened species of fish, wildlife, and plants. The use of such endangered resources by Native Americans for religious purposes may conflict with the requirements of this legislation. To date, no requests have been reported within the BLM for use of endangered species. This does not rule out that such requests may be made in the future.

While eagle feathers can presently be obtained, through a permitting system from the Fish and Wildlife Service, requests by Native Americans for use of other animals, plants, or fish may present basic conflicts with the Endangered Species Act and other conservation legislation. If the conflicts cannot be resolved through regulatory changes, legislative modifications may become necessary.

3. Native Americans may consider as sacred any areas which furnish subsistence resources for their group. The request for access to traditional collecting areas (e.g., fishing, acorn and pinenut areas) may present conflicts with existing BLM land use designations and local management goals. Such areas could be identified during the Bureau's Class I inventory (existing data compilation) studies and the information considered during the planning process.

4. Requests by Native Americans for possession and/or use of archeological materials (artifacts) recovered from BLM administered land, which are normally stored and occasionally displayed in museums having curatorial capabilities, present an extremely complex situation. There appears to be much variation between native groups regarding attitude toward such artifacts. Some groups consider such artifacts sacred and desire to use them for religious purposes. Some groups wish to be present during the excavation of archeological materials in order to perform certain rituals, and want artifacts returned to the soil after analysis. A few Native Americans are involved in conducting archeological investigations themselves.

It is difficult to fully assess the situation, since there is no consensus among Native American individual groups regarding archeological materials. The BLM's California State Office is currently working with California's Native American Heritage Commission to develop procedures for loan of heritage objects (artifacts) to Native American groups. After further evaluation and consultation with Native American groups regarding these concerns, the BLM will be in a better position to make recommendations. Legislative clarification regarding the ownership of archeological materials may become necessary.

5. Conflicts pertaining to the possession and use of archeological materials may relate to a more basic concern which focuses on the attitudes and beliefs of Native Americans toward archeological and anthropological research. While attitudes vary, many Native Americans oppose such studies of their culture. The BLM will need to address this situation and take a policy position.

6. The excavation of burial sites associated with Native Americans raises a sensitive issue. The BLM will have to establish a policy regarding such excavation. The policy should establish a consultation process that would be put into effect should aboriginal burials be encountered on BLM administered land. Such a process may include contacting all interested parties, including local Native American leaders, the State Historic Preservation Officer, and the county coroner, if appropriate. Recommendations covering how best to proceed would be based on this consultation process.

7. Antiquities Act permits[1/] are required for conducting archeological and paleontological work on Federal lands. Item 8(g) of the permit does address the exploration or excavation of burials on Indian lands and reservations.

There may be problems on other Federal, non-Indian lands if the potential effects of actions under the authority of an Antiquities Act permit on such things as Native American sacred sites or areas are not taken into account.

[1/] Antiquities Act Permits within the Department of the Interior are issued by the Departmental Consulting Archeologist, Heritage Conservation and Recreation Service, under the authority of the Antiquities Act of 1906 (16 U.S.C. 432, 433; P.L. 59-209); The Uniform Rules and Regulations (43 CFR Part 3) carry out the provisions of the Act.

To ensure that Native American concerns are considered, a pre-permit consultation could be required between the applicant and the appropriate local Native leaders. In addition, special stipulations covering Native American concerns could be added to the permit.

8. The Bureau has only received a few requests from Native Americans for access to sacred sites for religious purposes. In those instances where such requests have been made, there have been no problems accommodating them. The potential for conflict does exist, though, between requests for use of land by Native Americans and the designation of the land for a specific use by the Bureau. Such conflicts could be resolved by considering Native American concerns early in the Bureau planning process (see No. 9 below).

9. Many separate potential conflicts revolve around the Bureau's land use management decisions. Such decisions involve both land use allocations and designations of sites or areas to special systems. Examples of such land use decisions includes the following:

a. Designating an area as a wilderness study area or nominating an area for inclusion in the National Wilderness Preservation System (Wilderness Act of 1964, 16 U.S.C. 1131, P.L. 88-577).

b. Designating an area as an area of critical environmental concern (ACEC) for protection and preservation purposes (Federal Land Policy and Management Act of 1976, 43 U.S.C., 1701 et seq. P.L. 94-579).

c. Nominating a property for inclusion in the National Register of Historic Places (National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470, P.L. 89-665).

d. Allocating an area for:

1. Recreation use.
2. Livestock grazing.
3. Mineral leasing.
4. Timber harvesting.
5. Habitat protection.
6. Floodplain management.
7. Other uses.

In developing its land use plans, the Bureau is guided by the principle of multiple-use management, as set forth in the Federal Land Policy and Management Act of 1976. During the Bureau's planning process, all resources and land use alternatives are considered in formulating a management plan for a given area. By fully integrating Native American and other socio-cultural concerns into the Bureau's planning process, many potential conflicts could be avoided. It is possible that many land use decisions are and can be extremely compatible with Native American concerns. For example, designating an area for wilderness or as an ACEC may serve to protect and preserve those same areas that carry religious significance for Native Americans. Input by Native Americans during the inventory and planning processes will ensure that their concerns are considered.

10. Potential conflicts could occur in land transfer, permit, withdrawal, and other actions which convey a degree of land use control to an entity other than the Bureau. The conflict would occur where lands having unknown (to BLM) religious significance or importance to Native Americans were sold or a land use authorized to an entity other than BLM. In those cases where Native Americans are restricted from access to areas of religious significance, a conflict could occur.

There is no information to indicate such conflicts have, in fact, occurred in the past. However, to insure that such conflicts do not occur in the future, the Bureau's Division of Lands and Realty intends to require contact with Native Americans, in the vicinity of any lands where lands or realty actions are proposed, to determine whether or not the lands under consideration have religious significance. This requirement will be included in Land Reports, which are prepared as a part of Lands and Realty actions.

11. The Bureau's Division of Rangeland Management has identified a potential conflict with some land treatment practices, such as chaining of pinon pine areas. However, these potential conflicts could be identified through the Bureau's planning system and the environmental assessment procedures.

12. The use of herbicides for controlling plants that are poisonous to cattle and for controlling over-domination of a plant species in an area may inadvertently affect plants having religious importance to Native Americans. Prior consultation and proper planning could avoid these conflicts.

13. In Alaska, the Alaska Native Claims Settlement Act provides opportunity for Alaska Natives to identify and select such lands as burial grounds and traditional fishing camps. This has taken place over the past several years with the assistance of the Bureau of Indian Affairs and the National Park Service. If situations arise in the future involving BLM-administered areas, satisfactory solutions could be achieved with the aid of such organizations as the joint Federal-State-Native councils, subsistence councils, and so forth.

14. The BLM depends heavily on Native American firefighting crews in its fire suppression program. The Bureau is aware of the impacts this could have on Native American religious practices. Therefore, it has been and will continue to be a policy to allow crews to return to their homes for any recognized religious purpose.

IV. SUMMARY. The Bureau, in the development and revision of land use plans, observes the principle of multiple use and utilizes a systematic, interdisciplinary approach to achieve an integrated consideration of the various resources and values associated with the public lands.

Relying on the inventory of the resources and values, the Bureau, through its planning process, considers the present and potential uses of the land and formulates management plans based upon these uses. The Bureau, therefore, has the overall policy and direction to incorporate socio-cultural values, such as Native American religious concerns, into its land use planning and management systems. Many of the potential conflicts identified above could be avoided through use of these systems. The BLM's Cultural Resource Program will be working toward providing specific guidelines for full consideration of socio-cultural values in the inventory and planning system.

The purpose of the preceding discussion has been to present a preliminary evaluation of matters relevant to P.L. 95-341. The Bureau will continue to gather information dealing with Native American religious concerns and identify any conflicts that may result from Bureau policy and procedures. Additional information and reports will be forwarded to the Task Force for use in preparing the report to Congress on implementation of P.L. 95-341.

Roman H Koenings
Acting Associate

United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

APR 2 1979

Memorandum

To: Secretary of the Interior
Attention: Assistant Secretary for Indian Affairs

Through: Assistant Secretary for Fish and Wildlife and Parks

APR 12 1979

From: Director, National Park Service

Subject: National Park Service Internal Review and Recommendations to the Task Force on Implementation of the American Indian Religious Freedom Act of 1978

The attached document, "Assessment of Compliance Requirements of P.L. 95-341 for the National Park Service," details the major issues of concern to the Service and to Native Americans in relating to Religious Freedom and Park Preservation and Management. It also includes our recommendations as to how these issues should be addressed. We plan to prepare a more detailed report that will contain background data for Park Service use. That report, when completed, will be shared with the Task Force.

We have appreciated the assistance of Suzan Harjo of the BIA in arranging meetings with appropriate Native American Organizations. The Native American Rights Fund, the American Indian Law Center, the California Indian Heritage Commission and the advisory group of Indian religious leaders were helpful in reviewing our draft material and assisting us to appreciate their concerns. Sharon Allender of the Office of the Solicitor, also assisted significantly in interpreting the legal ramifications of the various legislation.

The Service has a mandate that includes significant responsibilities for the care, preservation and interpretation of sites related to historic and prehistoric Native American cultures. We therefore have a special interest in the preservation of Native American traditions. We stand ready to assist in the Department's Task Force and request an opportunity to review and contribute to the work of that Task Force as it develops its material. We also believe that involvement directly with those most affected by our performance is essential, and request an opportunity to participate in the public involvement process mandated by the Act and to be conducted by the Department.

ASSESSMENT OF COMPLIANCE REQUIREMENTS OF
P.L. 95-341
for the
NATIONAL PARK SERVICE

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March 23, 1979

DRAFT ASSESSMENT OF COMPLIANCE REQUIREMENTS OF
P.L. 95-341
for the
NATIONAL PARK SERVICE

INTRODUCTION

Public Law 95-341, approved August 11, 1978 states "that henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites." It further directs the President to "...direct the various Federal departments, agencies, and other instrumentalities responsible for administering relevant laws to evaluate their policies and procedures in consultation with native traditional religious leaders in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices. Twelve months after approval of this resolution, the President shall report back to the Congress the results of his evaluation, including any changes which were made in administrative policies and procedures, and any recommendations he may have for legislative action."

The mission of the National Park Service, -- to preserve and provide for the appropriate use of natural and cultural resources of national importance, -- identifies it as an agency with inherent concern for the conservation and interpretation of Native American cultures as well as inherent responsibility to honor commitment to the exercise of religious freedoms by Native Americans. Units of the National Park System encompass historic and archeological parks, monuments, memorials, seashores and recreation areas. Many of these were established to commemorate the cultural heritage of the Native American or historical events associated with that heritage. Sitka National Historical Park in Alaska is the site of the Tlingit Indian resistance of 1804; Casa Grande National Monument in Arizona encompasses ruins of a massive four-story building constructed of high-lime desert soil by Indians who farmed the Gila Valley 600 years ago; Hovenweep National Monument and Mesa Verde National Park in Colorado protect and interpret pre-Columbian cliff dwellings; Ocmulgee National Mounument in Georgia and Knife River Indian Villages National Historic Site in North Dakota protect remains of mounds and villages which tell the story of the cultural evolution of the farming Indian village civilizations in the Eastern United States; Natchez Trace Parkway generally follows the old Indian traces, or trail, between Nashville, Tennessee and Natchez, Mississippi. Other parks contain significant archeological sites such as Shiloh National Military contain significant archeological sites such as Shiloh National Military Park in Tennessee with its village mound complex which was a hub of ceremonial and trading activities for the region. Big Bend National Park, Texas, Glen Canyon National Recreation Area, Utah-Arizona and Canyonlands National Park, Utah contain numerous prehistoric remains of Native Americans. More than 20 National Park areas are located contiguous to Indian reservations.

Recent additions of monuments in Alaska contain archeological resources significant to Aleuts, Eskimos and American Indians.

To assess the requirements of the National Park Service necessary to comply with P.L. 95-341, the following steps are being carried out:

Item 1. Review of Servicewide documents for impacts on Native American religious freedoms--Management Policies, Code of Federal Regulations, Directives, Guidelines, Program Objectives, etc.

Item 2. Inventory of each park to determine conflicts between park procedures and Native American religious practices.

Item 3. Development of recommendations for resolving conflicts in documents or practices.

Item 4. Consultation with native traditional religious leaders and Native American organizations.

ASSESSMENT TO DATE

Regional Offices have conducted a park by park assessment of actions required to comply with P.L. 95-341. The Washington Office Divisions have conducted similar assessments. An initial review of NPS management policies and the Code of Federal Regulations (CFR 36-Parks, Forests and Public Property and CFR 43-Public Lands: Interior) has been done by the Office of Management Policy. This material, along with the NPS Native American Task Force Report of June 30, 1978 is being studied. The following broad needs have been identified:

1. To develop a program to assure consistent Servicewide treatment of Native American Religious Freedom issues and to guide general relationships with Native American groups. This will require a thorough review and revision of relevant NPS Policies, Directives, Guidelines and CFR's.

2. To develop a research program to identify, inventory and evaluate traditional religious uses and practices related to sites or resources on park lands in order to:

   a. provide for physical protection and appropriate [privacy of] use of sites;
   b. allow reasonable and prudent access to sites and provision for the collecting, taking or receiving of natural resources used in the exercise of Native American religious practices;

   c. identify and protect those sites and resources within parks that are associated with Native American cultural and religious heritage;

   d. develop adequate baseline data necessary to formulate general program and management decisions.

In addition, the following issues need explication and resolution to the extent possible:

1. The conflict between the equal protection and the First Amendment rights of other park visitors and the public use mandate of park areas and the desire on the part of Native Americans to be assured of privacy or exclusive use and to enforce standards of decorum against other visitors when the native americans are exercising their religious freedoms.

2. Legislative authority for special physical protection of sites in parks related to Native American Cultural heritage and used for religious/cerimonial purposes is not clearly spelled out.

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3. The Freedom of Information Act requires disclosure of sites if they are carried in a Service inventory. Native American groups and the Service may prefer that this inventory be kept confidential.

4. There is conflict between the generally accepted principle of freedom of academic/scientific inquiry and Native American beliefs and attitudes towards anthropological and archeological studies of their culture, past and present. There is not, at this time any consensus among Native Americans concerning the need for and scope of academic research. Many are suspicious of the motivations behind such studies. Most Native American groups have developed fairly successful means of protecting traditional religious beliefs and esoteric ceremonial knowledge. Some Native Americans claim that it violates their religious beliefs to be the subject of study, asserting that it is an exploitive and desecrating activity. Other Native Americans favor anthropological research, but prefer to undertake it themselves and retain control over what is made available to external sources and what is retained as esoteric knowledge. Still others see such research as a necessary means to record and hold on to traditional practices and beliefs that are being lost from their culture. The Service will need to take a policy position on the extent to which anthropological and archeological studies infringe upon Native American religious practices.

5. There is a conflict between contemporary Society's perceived right to knowledge and understanding of current and past lifeways and the right of Native Americans to protect from desecration sacred and esoteric knowledge concerning their religious values and practices. This is related to the broad issue that information acquired in the conduct of Service programs is in the public domain and in conformity with our policy of acquiring and presenting accurate and factual interpretation of history.

6. Concern about potential expansion of use of park lands for traditional religious activities and their potential adverse impacts on park resources or general public use. Accordingly, we shall set limits on use based on adequate research. The underlying purpose of this research should be to enable the Service to balance the relative values, needs and benefits of its programs (i.e., resource preservation, archeological investigation) against the Native Americans interests in the exercise of their religious beliefs, and to formulate alternative strategies to minimize the degree of government impingement thereon. However, in no event should the Service compromise the basic mandates embodied in authorizing legislation.

RECOMMENDATIONS

Legislation

1. Seek legislation to provide a blanket amendment to all National Park System statutes to give the Secretary of the Interior discretionary authority, providing it will not compromise the basic values for which an area was established nor significantly alter established strategies for resource management -- to allow, under special circumstances (criteria to be developed by individual bureaus at a later time) the taking of surplus animals and plants except endangered or threatened species. Such taking would be judged on a case by case basis and would be, so far as management could determine for bona fide endeavors.

2. Seek legislation or procedures to provide excepted appointments, hiring as consultants or the payment of non-salary expenses to Native Americans who, by virture of their experience and position within a Native American group, possess "credentials of emminence" certifying them to be knowledgeable in their group's cultural values and beliefs.

3. Seek legislation to exempt the Service from the requirements of the Federal Advisory Committee Act in utilizing Native Americans in an advisory capacity for addressing Native American issues relevant to the use and administration of the National Park System.e Act.

4. Seek legislation that will clarify the ownership of artifacts and establish a process for addressing, consistent with other legal requirements, public policy and scientific values, requests by Native Americans for the return of sacred objects associated with traditional Native American religious practices or special treatment of such objects.

Policy and Regulations

1. As an interim measure, refine and update Special Directive 78-1 to provide an immediate blanket revision to existing policies and regulations so that within existing authority reasonable accommodation can be made to Native Americans religious practices.

2. Expand the definition of Native Americans in Special Directive 78-1 to include native descendents on Guam, the Northern Mariana Islands and American Samoa.

3. Establish a policy to provide that the results of anthropological research in parks, or supporting park programs, be made available, in an understandable and usable manner to groups affected, especially Native Americans.

4. Establish as part of our program development guideline, a process insuring consultation with Native American groups affected in determining
   - General Management Plans
   - anthropological and archeological research
   - areas of esoteric knowledge or sites of religious value

This consultation will not compromise the scientific validity of the study nor the managerial usefulness of the data.

5. Establish a process by which to resolve use, ownership and possession conflicts as regards religious freedom between NPS and Native Americans. Process will be based on legislation, management policies, available research data and sound management techniques.

6. Establish a policy with regard to excavating burial sites associated with Native Americans as follows:

   When it is known or expected that burial sites will be disturbed by Service projects, including research, consultation with the appropriate Native American group will be initiated by the Service.

   Burials from the historic period will be reinterred by the Service or the Service will assist the appropriate Native American group in their reinternment, unless specifically requested to dispose of the remains in another manner. The Service reserves the right to archeologically excavate the remains and to undertake on-the-site anthropological measurements of skeletal material on the general principle of advancing scientific knowledge of the human past. This does not applyto any burial that can reasonably be linked to known living descendents. In such an instance, the wishes of the living descendents will be respected. Descendents will be defined by the relevant Native American group and NPS staff.

Burials from the prehistoric period will not be reinterred nor turned over to Native American groups for reinternment. They will be made available for scientific study on the principle of advancing scientific knowledge of the human past. (Exceptions may be made for prehistoric sites where the connection to contemporary Native Americans is known or the possibility is strong.) Notwithstanding, consultation with appropriate Native American groups concerning such burials will occur prior to their removal. The purpose of such consultation will be to determine their views and to accommodate their reasonable and feasible requests for special treatment of such remains provided it will not compromise the scientific values of the research.

7. Amend NPS policy on "Acquisition and Care of Historic Objects" (p. V-II) to state that "no such materials will be acquired where there is reasonable doubt that those from whom they are received have the right to dispose of them".

8. Issue regulations governing appropriate decorum, and use and protection of park resources associated with Native American traditional religious practices.

In addition to the legislation, policy and regulations detailed above, NPS will undertake the following actions:

1. Where subsistence hunting, collecting, foraging, fishing and other traditional cultural activities or uses are authorized by law, conduct research to establish baseline data to determine the impacts of these activities on the conservation and public use of park resources.

2. Develop a comprehensive inventory by park unit as to the current and anticipated impacts of P.L. 95-341.

3. Establish research program to acquire baseline data necessary to support policy analysis, program evaluation, and managerial decisions related to Native American use of and impacts on park resources and visitor activities.

4. Establish Regional and park programs for consulting with Native American leaders.

5. Continue to provide to Native American Groups technical assistance in museum matters and assistance in developing programs to record and interpret their cultural history.

6. Continue full implementation of Title IV of P.L. 95-390 (FPM letter 550-70), which provides for compensatory time off for employees whose religious beliefs require that they abstain from work during certain periods of the work-day/week.

7. Initiate revision of relevant codes, management policies, directives, guidelines.

TENNESSEE VALLEY AUTHORITY
NORRIS, TENNESSEE 37828

April 12, 1979

The Honorable Forrest J. Gerard
Assistant Secretary of Indian Affairs
U.S. Department of the Interior
Washington, DC 20240

Dear Mr. Gerard:

In response to Secretary Andrus's memorandum of January 26, 1979, enclosed is the "Initial Report Concerning the Tennessee Valley Authority's Implementation of the Indian Religious Freedom Act of 1978."

If you have any questions concerning the report, please feel free to contact me.

Sincerely,

Thomas H. Ripley

Thomas H. Ripley, Manager
Office of Natural Resources

Enclosure

INITIAL REPORT CONCERNING THE TENNESSEE VALLEY AUTHORITY'S IMPLEMENTATION OF THE INDIAN RELIGIOUS FREEDOM ACT OF 1978

The following is an initial report concerning the Tennessee Valley Authority's (TVA) implementation of the Indian Religious Freedom Act of 1978. During evaluation of its policies and procedures as required by the Act, TVA has thus far concentrated on two general areas of concern: (1) protection of and access to sacred sites, and (2) protection of and access to sacred objects.

Protection of and Access to Sacred Sites

The Agency has general policies and procedures governing access to and protection of TVA property, including land which contains Indian sites. A copy of the TVA Code on these policies has previously been forwarded to the Department of the Interior for the information of the task force on Indian religious freedom. To summarize, most TVA properties are open to the public. However, access may be restricted in areas in which there is danger of injury to persons or property.

Due to incidents of vandalism and collection of artifacts by unauthorized persons, sensitive archaeological sites are considered restricted areas and may be fenced, posted, and patrolled for their protection. Also, sites are sometimes fenced to identify and protect them from Agency authorized construction or mining activities.

However, procedures exist by which persons may be permitted to enter a restricted area when there is a legitimate reason for their presence. These procedures have proven to be efficient in the past, and they appear to be flexible enough to accommodate requests for access to sacred sites by practitioners of native traditional religions.

A problem concerning access and protection of sacred sites can occur when a proposed activity of the Agency may alter or permanently restrict access to a sacred site. In the event that such a situation exists, it is TVA's intent to seek a solution which will satisfy both the needs and goals of the Agency and the rights of Native Americans to meaningfully express their religious beliefs.

TVA is considering as a possible approach the use of the established environmental review process to identify any potential infringements on the free exercise of religion which might occur as a result of a proposed Agency activity. During the review process, TVA would investigate the project area to determine whether it is currently considered a sacred site or is related to religious activities of any native traditional religion.

If the site is found to be a subject of current religious practices, the Agency would consult with native traditional religious leaders to determine whether the proposed activity would infringe on the free exercise of native traditional religion. If it is found that the proposed activity would infringe on the free exercise of native traditional religion, then the Agency would prepare and examine alternate plans in consultation with native traditional religious leaders.

If the alternatives are not feasible and the proposed action is deemed necessary to carry out the Agency's programs or obligations, the justification for proceeding with the action would be reviewed by an appropriate staff within TVA which is responsible for coordinating compliance with historic and cultural preservation requirements. The review's findings and justification for proceeding with the action would be included as part of the environmental documentation which is prepared and transmitted to the Board of Directors for its review along with the staff recommendation with respect to the project. A summary of the review's findings and justification for proceeding with the action would be communicated to native traditional religious leaders and other interested parties, along with notice of the final decision by the Board of Directors.

Protection of and Access to Sacred Objects

A second potential problem area which TVA has identified concerns access to sacred objects which are recovered on Federal property during construction, authorized excavation of archaeological sites, or other activities. As a general matter property recovered from lands there belongs to the United States. Artifacts may be lent for temporary periods to museums which meet standards established by the American Association of Museums, but the artifacts must eventually be returned to the designated Federal repository.

A problem can arise when permanent possession of publicly owned artifacts, including sacred objects, is sought by any other group or individual. A number of issues are involved in such situations, including right of ownership, availability of archaeological materials for scholarly research, and when sacred objects are involved, the free exercise of religion. This is a situation which may be faced not only by Federal agencies with land management responsibilities, but also by other organizations and institutions. The caretaking of artifacts is an area in which the task force may be helpful in finding an appropriate and satisfactory resolution of the complex issues involved.

The protection of sacred objects is related to the protection of archaeological sites. The Agency is responsible for the protection of significant archaeological resources on TVA property. TVA actively seeks to avoid impacting significant archaeolgical resources by its activities. However, when it is found that an approved activity must impact an archaeological site, TVA contracts with qualified professionals to conduct appropriate data recovery.

A large number of archaeological sites on TVA property are not impacted by Agency activities, but need protection from vandalism and other disturbances. Due to the remoteness of many sites and the dispersed nature and size of the land areas which must be patrolled, the Agency has sometimes found it difficult to provide adequate protection for sensitive sites. In order to provite better protection for sites and the objects contained within them, TVA is in the process of increasing its budget for the execution of this responsibility.

TVA recognizes a need for more adequate protection for archaeological resources. Under present law, it is extremely difficult to prosecute persons accused of unauthorized collection of artifacts. Legislation to strengthen the ability of agencies to protect archaeological resources on Federally owned public lands is needed. The task force should analyze and consider supporting legislation which would appropriately increase the protection of archaeological resources, including sacred sites and sacred objects.

UNITED STATES DEPARTMENT OF COMMERCE
Economic Development Administration
Washington, D.C. 20230

April 9, 1979

Honorable Forrest Gerard
Assistant Secretary for Indian Affairs
U. S. Department of the Interior
Washington, D. C. 20240

Dear Mr. Gerard:

This is a follow-up to the American Indian Religious Freedom Act of 1978 Task Force meeting of April 2. At this meeting the members of the Task Force were requested to have a report in by April 9 identifying any issues, status and problems of issues and any recommendations.

As I stated in my letter of March 29, the only operating unit of the Department of Commerce that may have policies and procedures which may affect this act is the National Marine Fisheries Service (NMFS) which is part of the National Oceanic and Atmospheric Administration (NOAA).

This unit (NMFS) has identified the Alaskan bowhead whale hunt and the activity in the salmon fisheries of the Pacific Northwest as the two primary current situations which involve potential impacts on Native American religious beliefs and practices.

As the harvesting of the whales are being regulated internationally by the International Whaling Convention and nationally by the U. S. Whaling Convention Act, it is recommended that a meeting be held with representatives of NMFS and the Task Force working staff.

Also, at the same time the salmon issue of the Pacific Northwest which comes under President Carter's Federal Task Force on Washington Fisheries can be discussed.

The National Marine Fisheries Service has been working very closely with the Alaskan Eskimos and the American Indians on both of these issues. It would be most advantageous if an immediate meeting can be held to discuss the problems and issues of both these matters.

After the meeting of April 2, I discussed several matters with Sam DeLoria regarding the Economic Development Administration (EDA). He stated that EDA may want to review how the funding of projects on Indian reservations may have problems with the protection of Indian historical, religious and cultural sites.

We have reviewed this issue and wish to report that all applications to EDA on construction type projects must be formally assessed with respect to compliance with the "Procedures for the Protection of Historic and Cultural Properties," which is published by the Advisory Council on Historic Preservation (Chapter VIII, Part 800, 36 CFR). In the case of Indian reservation projects, all applications are viewed by the State Historic Preservation Officer (SHPO).

The assessment must summarize the results of consultations with the SHPO and, based upon the review process and the views of the SHPO, must state whether or not a covered property will be affected by the construction project. If there is affect, all of the steps and protective measures taken to complete the "procedures" must be detailed, and the affected property and the nature of the affect must be described. The assessment must also include the results of the coordination process between EDA and the Advisory Council on Historic Preservation.

Prior to project approval, the agency must make a formal finding that such a project will not significally affect the quality of the human environment.

Following project approval, every construction contract is reviewed to assure that the contract terms and conditions reflect any special requirements placed upon the project as a result of the SHPO review and determinations of EDA.

Additionally, all contractors must agree to facilitate the preservation and enhancement of structures and objects of historical, architectural or archaeological significance and when such items are found and/or unearthed during the course of project construction, to consult with the State Historic Preservation Officer for disposition of the items. (Reference - National Historic and Preservation Act of 1966 - 80 Stat. 915, 16 USC 470 - and Executive Order No. 11593 of May 31, 1971.)

After you and your Task Force staff have had the opportunity to review this letter and have questions or desire additional information, please no not hestitate to call.

Sincerely,

RAY E. TANNER
Task Force Member Representative
U. S. Department of Commerce

UNITED STATES DEPARTMENT OF COMMERCE
Economic Development Administration
Washington, D.C. 20230

March 29, 1979

FJD
4/2

Honorable Forrest Gerard
Assistant Secretary for Indian Affairs
U. S. Department of the Interior
Washington, D. C. 20242

Dear Forrest:

This is a status report on the activities to date regarding the internal reviews and evaluations of all the operating units of the U. S. Department of Commerce as they may affect the religious rights and cultural integrity of Native Americans.

Enclosed is a listing of the Commerce operating units that we have determined have no affect on the American Indian Religious Freedom Act of 1978. There may be some concerns by the Indian religious leaders pertaining to one or more of these operating units that can be addressed when questions arise.

There is one operating unit of Commerce, the National Oceanic and Atmospheric Administration, that may have policies and procedures that may have to be evaluated to more fully determine how they affect the Indian religious and cultural rights. It is my understanding that a member of your staff, Ms. Sue Hvalsoe spent some time with NOAA to determine what are the Indian religious and cultural rights. Due to the uncertainty of what all these rights may be, representatives of NOAA will be in attendance at the April 2 meeting to obtain additional information so that recommendations in their act, if necessary, can be taken care of.

I look forward to seeing you at the April 2 meeting of the Task Force and to receive a briefing on how input from the tribal religious leaders will be obtained to assist us in providing the information required.

Sincerely,

Ray

RAY E. TANNER
Special Assistant
for Indian Affairs

Enclosure

COMMERCE DEPARTMENT'S OPERATING UNITS CONTACTS FOR THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT

Bureau of the Census

Bureau of Economic Analysis

Economic Development Administration

International Trade Administration

Maritime Administration

National Bureau of Standards

National Fire Protection and Control Administration

National Technical Information Service

Office of Product Standards

Office of Telecommunications

Office of Minority Business Enterprise

Patent & Trademark Office

U. S. Travel Service

General Counsel

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Washington, D.C. 20235

AP 6 1979

F3/MKO

TO: Raymond E. Tanner
Special Assistant for Indian Affairs
Economic Development Administration, DoC

FROM: Terry L. Leitzell
Assistant Administrator for Fisheries

SUBJECT: American Indian Religious Freedom Act

This is a supplement to our memorandum of March 21, 1979, concerning laws and policies that the National Marine Fisheries Service (NMFS) administers which may affect American Indian religious rights and practices.

In that memorandum, we described in general terms the nature of the provisions of laws under our responsibility which might affect American Indians, Eskimos, Aleuts, and Native Hawaiians. We have since sent a package of materials concerning the American Indian Religious Freedom Act to our regional offices and research centers and have requested from them information regarding their activities in these areas. A copy of the package is attached.

In addition, after surveying National Marine Fisheries Service activity from our perspective here in Washington we have identified the Alaskan bowhead whale hunt and the activity in the salmon fisheries of the Pacific Northwest as the two primary current situations under our purview which involve potential impacts on Native American religious beliefs and practices. In this memorandum, we would like to describe briefly these situations and the NMFS role in them.

The subsistence harvest of bowhead whales by Alaskan Eskimos is a traditional activity with complex, persuasive connections to the Eskimo religion and social and political structure. Harvest of whales is regulated internationally by the International Whaling Convention and nationally by the U.S. Whaling Convention Act. In addition, the bowhead whale is listed as "endangered" under the Endangered Species Act of 1973. Under this Act and the Marine Mammal Protection Act of 1972, exceptions have been made for subsistence whaling by indigenous peoples. The issue is one of tradeoffs--harvesting whales from this population constitutes some danger to the whale population, but not allowing a harvest constitutes a danger to the health and well-being of the Eskimos who participate in the hunt. National Marine Fisheries Service personnel have participated significantly in assessment and consideration of the religious, social, and cultural implications of various harvest levels and management regimes. The most recent of these activities was NMFS participation in organizing international panels of experts in cultural anthropology, nutrition, and wildlife science convened in Seattle in February 1979 under the auspices of the International Whaling Commission to assess and document the place of the bowhead whale hunt in the social and cultural structures of the North Alaskan Eskimo. Reports from these meetings are available and will form part of the basis upon which a working group of the International Whaling Commission will base consideration of that group's future actions. One of the major findings of the reports from these panels was that the Eskimos, themselves, must be integrally involved in the development of a management regime and in the assessment of the current religious and cultural context within which whaling occurs. We have followed, and will continue to follow, these recommendations through the use of public hearings, seeking the active participation of groups such as the Alaska Eskimo Whaling Commission in the development of management alternatives, and by other means. Unfortunately, some of the issues in the bowhead whale fishery are currently under litigation. For that reason, we recommend that, aside from ongoing U.S. involvement with the International Whaling Commission and the current NMFS research and monitoring programs, no further specific action be taken in this case with respect to the American Indian Religious Freedom Act until the legal issues have been resolved.

In the Pacific Northwest, the salmon and certain other fishery resources form an integral part of the complex of religious and cultural activities of the American Indian tribes in the region. Using salmon as a specific example, although most of the salmon management is under the jurisdiction of the states, NMFS has played a role in bringing the Indian and other interests together in two ways. First, the Pacific Fishery Management Council, with whom NMFS works closely in developing and implementing management plans for the salmon resources under the Council's jurisdiction, has Indian representation on many of the Council's advisory boards and panels. Second, and more general, NMFS representatives have been prominent on the regional teams of President Carter's Federal Task Force on Washington Fisheries. This task force has broad responsibilities in the investigation of the many problems which exist in the region's fisheries, including those involving Indian peoples. At every step in the task force and regional team activities, consultations were made between task force or team personnel and the Columbia River Inter-Tribal Fish Commission (Portland, Oregon), the Northwest Inter-Tribal Fish Commission (Olympia, Washington), and many local tribes and groups. It has been NMFS general policy to make allocations for subsistence and ceremonial uses where these needs or uses can be demonstrated. Along with other activities centered in our regional office in Seattle, the activities cited above constitute NMFS ongoing attempts to deal on an informed basis with these issues.

Similar to the case of the bowhead whale issues, in light of NMFS ongoing activity in this area, we recommend that no further specific action in the Northwest salmon case be taken with respect to the American Indian Religious Freedom Act until the President's task force has had an opportunity to present their recommendations in full and all concerned parties have had an opportunity to review and respond to their findings.

These are the two major current situations within NMFS purview which bear directly on matters set out in the American Indian Religious Freedom Act. There are, of course, other situations which will arise and demand our attention. As we pointed out in our memorandum of March 21, we would welcome any information resulting from your task force activities which would help us to identify American Indian religious and cultural activities of which we may not be aware and upon which our actions may have an impact, or which would in any other way aid us in complying with the intent of this Act.

Attachments

cc: Arva Jackson
Director, Office of Civil Rights, NOAA

I concur /s/ Marty Belsky
Eldon V. C. Greenberg
General Counsel, NOAA

CLEARANCES: Signature Date

F3:MKOrbach ______________________________
GCF:REGutting ______________________________

National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
1700 Westlake North
Seattle, WA 98109

In reply refer to: FNW32/E-COR

Date: MAY 4 1979

To: Winfred H. Meibohm, Executive Director, Fx3 5/8

From: Regional Director, FNW

Subj: American Indian Religious Freedom Act

This is in response to your memorandum F3/MKO dated April 6, 1979, concerning the "American Indian Religious Freedom Act". In that memorandum you requested by May 10 our comments relative to activities within the Northwest Region which may fall under the purview of the Act.

To date we have had only one incident (case report attached) in which American Indians raised the issue of religion while taking seals protected by the Marine Mammal Protection Act of 1972. Subsequent contact with the tribal religious leader developed information that marine mammals have been taken historically to manufacture articles of native handicraft, but that no religious significance, historical or otherwise, was attached to the taking.

Discussions with GCNW indicate present regulations concerning taking of marine mammals by natives (native exception) under the Marine Mammal Protection Act appear broad enough to permit modification to allow taking for religious purposes, if it becomes necessary. The present regional interpretation of the Marine Mammal Protection Act extends the native exception to natives residing in the lower 48 on the coast of the North Pacific Ocean, but only for the purposes of creating and selling authentic native articles of handicraft and clothing. This interpretation appears in conflict with one contained in a memorandum from Terry L. Leitzell to Arva Jackson dated March 21, 1979 (page 2, paragraph 5). If in fact the Marine Mammal Protection Act native exception is held applicable only to Alaskan natives, as is the Endangered Species Act, then amendments to both acts will be necessary to permit American Indian religious and cultural practices, if any, in the lower 48.

Recent Federal Court decisions have recognized that certain treaty Indians have salmon fishing rights not extended to non treaty fishermen. In U.S. vs Washington the court recognized the Indians right to have the

NATIONAL MARINE FISHERIES SERVICE
RECEIVED
MAY 7 1979
OFFICE OF
EXECUTIVE OFFICER

opportunity to harvest up to 50% of the returning salmon, and also the right to harvest salmon for ceremonial purposes. The court concluded that the salmon caught for Indian ceremonial purposes were not to be included in the computation for division of catch. This case and others have had a direct effect on salmon management and enforcement carried out under the Sockeye or Pink Salmon Fishing Act of 1947 and the Fishery Conservation and Management Act of 1976. In fact, today four Columbia River tribes petitioned the Federal Court to close the offshore troll season set under the authority of the Fishery Conservation and Management Act of 1976. This request was based on the argument that not enough salmon arrived at the Indians usual and accustomed fishing grounds to allow the opportunity to harvest 50% and to exercise their ceremonial fishing rights.

We have been aware for some time that Indians have rights which exceed those of other United States citizens and have been in contact with various tribes and Indian organizations attempting to make our programs responsive to Indian peoples needs wherever possible. We are planning a series of meetings in the near future with the various northwest Indian tribes to discuss what, if any, religious significances are attached to the taking, importing, or possessing of marine mammals. At the same time we will discuss certificates of inclusion issued under the Marine Mammal Protection Act and religious and cultural practices, if any, associated with the act of fishing. We will advise you as soon as these meetings have been concluded.

DR Johnson
Donald R. Johnson

Attachment

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P. O. Box 1668, Juneau, Alaska 99802

Date : April 19, 1979

Reply to Attn. of:

To : Fx3 - Winfred H. Meibohm

WHM 4/23

Harry L. Rietze

From : FAK - Harry L. Rietze

Subject: American Indian Religious Freedom Act
(Reference Mr. Meibohm's memo dated April 6, 1979)

We have reviewed the provisions of the subject Act and agree with the statement in your above referenced memo that NMFS has dealt in a reasonable and effective manner with these matters in those cases in which they have arisen and that we will continue to do so in the future. Members of your immediate staff are familiar with our programs in Alaska and we assume they will furnish any information the task force might require. Regional personnel are available to provide specific information to the Central Office staff.

[illegible] 1979

National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Duval Building
9450 Koger Boulevard
St. Petersburg, Florida 33702

April 17, 1979 FSE2/CMF

TO: Winfred H. Meibohm WHM 4/23
Executive Director, NMFS,
Washington, D.C., Fx3

FROM: William H. Stevenson
for Regional Director, FSE

SUBJECT: American Indian Religious Freedom Act

This is in response to your memo of April 6, 1979 requesting our comments on the potential or actual impact of subject Act on activities in this region. We foresee little or no impact on Indian religious freedom resulting from the laws administered and enforced by the Southeast Region. To the best of our knowledge only one American Indian has been involved in any of our enforcement cases (an import seizure) which was not related to religious articles or activities. Habitat protection programs have not affected any Indian Reservations to date but we will be alert to any Indian religious considerations in the future.

NATIONAL MARINE FISHERIES
APR 23 1979
14
CORRESPONDENCE CONTROL UNIT

United States Department of the Interior
HERITAGE CONSERVATION AND RECREATION SERVICE
INTERAGENCY ARCHEOLOGICAL SERVICES-ATLANTA
1895 Phoenix Boulevard
Atlanta, Georgia 30349

REPLY REFER TO:

APR 5 1979

The Honorable
Forrest J. Gerard
Assistant Secretary of Interior
Washington, D. C. 20240

Dear Mr. Gerard:

This is in response to the task force meeting of April 2, 1979 relating to the American Indian Religious Freedom Act of 1978 (PL 95-341). At this meeting, as you will recall, it was requested that Federal agencies which may be impacting Native American religious freedom submit a report on the policies which they feel impact these freedoms.

As designated representative of Interagency Archeological Services, I am reporting the steps which this agency has undertaken to implement this Act.

The policy of Interagency Archeological Services has always been to protect any archeological resource threatened by construction activity. Although it is our desire to leave these resources in the ground undisturbed, it is often necessary to excavate them when there is no other method available to prevent their loss.

It is through these excavations that Interagency Archeological Services may be impacting the religious freedoms of the Native Americans of the United States, primarily through the disturbance of aboriginal burials and their associated grave offerings.

In order to provide a measure of consistency in the treatment of human remains, the Heritage Conservation and Recreation Service--of which Interagency Archeological Services is a branch--has developed a policy delimiting guidelines on the disposition of human remains. This policy states:

> Where archeological investigations conducted by HCRS as an authorized Federal Undertaking disturbs marked or identified deliberate interments of human remains, all prudent and feasible efforts will be made to identify and locate those who can demonstrate direct kinship with or descent from those interred individuals. The Departmental Consulting Archeologist, in consultation with those most closely related members, will determine within 45 days the proper disposition of those remains. No remains will be reinterred until after appropriate documentation and study are completed.

APR 9 1979

This section of the policy addresses itself to those tribes of which there is an historical record, or where there is a knowledge of individuals in the area about the grave(s) discovered. In this way, the bones of relatives of living people will not be stored in a museum or educational institution.

If there are no individuals who can demonstrate direct kinship for a burial or group of burials, yet there is demonstratable ethnic affinity to specific living groups of Native Americans, "...all prudent and feasible efforts will be made to seek out traditional spiritual leaders, elders or spokesmen for these groups. The Departmental Consulting Archeologist, in consultation with these leaders, will make a decision within 45 days concerning the proper disposition of the remains." Again, no remains will be reinterred until after appropriate documentation and study are completed.

In the event that the osteological remains "cannot be identified with a specific contemporary ethnic or Native American group, the interests of a particular group are not applicable, but the agency or institution charged with the care or custody of the collection shall continue to maintain the collection with responsible and sensitive attitudes in keeping with the dignity and respect to be accorded to all exhumed human skeletal remains."

The policy further states that the Federal agency responsible for funding the archeological data recovery programs which recover the interred human remains will bear the necessary expenses for proper disposition of these remains.

The concern for the religious practices of Native Americans and other ethnic groups is demonstrated through the implementation of this policy, as it shows a concern for those individuals who are descendants of the interred individuals. A conscious effort is being required to contact all those whose religious practices are involved, instead of allowing the excavation and storage of individuals who may be related to living ethnic groups. The burial policy is truly nondiscriminating toward any ethnic group. No differentation is made between Native Americans, Afro-Americans, or Anglo-Saxons ("whites"). If the human remains can be identified to any specific ethnic group, they will be reinterred after the skeletal material are studied.

It is the disturbance of these interments, however, which is the major concern of many Native American groups throughout the United States. Many times these burials are discovered through construction activities (by being unearthed with power machinery). Other times they may appear as darker areas in the ground which turn out to be burial pits instead of the storage pits or trash pits they were originally thought to be. And in other instances, the burial pit may be recognized from the beginning.

The excavation of these burials provides information about the religious practices, dietary practices, and physical structure of the human groups of the past, as well as other information. The groups who are still present can benefit from the scientific study of the burials through an increased awareness of their history and social customs. This information is lost when a burial is encountered by a "pothunter" (a person who digs archeological sites for the artifacts found in them).

For comparison purposes, the scientific methods employed by the professional archeologist in the excavation of a burial (dental picks, brushes and other small tools) insures that nearly every bit of information that is present is recovered. A pothunter, in his quest for the burial goods which are often found with an interment, rarely cares about the bones of the burial, and even more rarely about the historical, societal, or cultural information present. Usually any bones encountered are left in the pile of dirt dug out of the grave--any reburials are either accidental or an attempt to prevent the discovery of the site by other pothunters or by a qualified archeologist.

As shown above, the excavation of aboriginal burials is important in providing various classes of information to the general and scientific communities. And, as an attempt to gain an understanding of Native American concerns about this issue, the Interagency Archeological Services office in Atlanta, Georgia, has sent copies of this policy to Native Americans asking for responses, comments, and questions about the policy. Feedback has been negligible at this point, although it is hoped that concerns will be made known through time.

In summary, then, it may be stated that IAS is attempting to change the policy of total curation of any human remains that may be recovered through archeological investigations to a policy where there is concern for the Native people of the United States, regardless of their origin.

Jo Watkins

Joe Watkins

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MEETING OF THE TASK FORCE
TO PREPARE THE AMERICAN
INDIAN RELIGIOUS FREEDOM ACT
IMPLEMENTATION REPORT, APRIL 2, 1979,
WASHINGTON, D.C.

Opening Remarks - Assistant Secretary - Indian Affairs
Forrest J. Gerard

Overview - Status Report - Special Assistant to the
Assistant Secretary - Indian Affairs
Suzan Shown Harjo

Introduction - Task Force Members and Project Representatives

Status Report from Task Force Members

Status Report from Project Representatives

Discussion - Report Preparation

1. Consultation
2. Public participation
3. Task Groups
4. Field Meetings
5. Schedule
6. Deadlines for Draft Report

UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

MAR 30 [illegible]

Honorable Forrest J. Gerard
Assistant Secretary for Indian
  Affairs
Department of the Interior
Washington, D.C. 20240

Dear Mr. Gerard:

Thank you for your letter of March 5, 1979, concerning the American Indian Religious Freedom Act of 1978. I am pleased to serve as the U.S. Commission on Civil Rights representative to the Task Force preparing the report to be submitted to the Congress under P.L. 95-341.

Although the Commission is probably not an agency which administers or enforces federal laws, regulation or policies, it is an agency with authority to study issues of religious discrimination, and to make recommendations concerning such issues to the President and Congress.

In order to comply with the spirit of the work of the Task Force I have enclosed a brief outline of the functions of this agency which have an impact on American Indian Religious Freedom issues.

Sincerely,

Paul Alexander
Assistant General Counsel

Enclosure

A Functional Description of the
U.S. Commission on Civil Rights
For the Task Force on American Indian Religious Freedom

The U.S. Commission on Civil Rights is established as a factfinding agency within the Executive Branch. It is authorized by the Civil Rights Act of 1957, as amended, to study and collect information concerning legal developments constituting discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap or national origin, or in the administration of justice.

The Commission also has authority to appraise the laws and policies of the Federal Government, and to serve as a national clearinghouse for information with respect to these denials of equal protection of the law or discrimination. In addition, the Commission has jurisdiction to investigate allegations of voting rights deprivations based on these grounds.

Agency Functions

Employment

The Federal Employees Flexible and Compressed Work Schedules Act of 1978 requires agencies to make reasonable accommodations to the religious needs of its employees. The Commission has recently amended its attendance regulations to allow employees to observe religious obligations during the normal work day and to make up the time outside the normal work schedule. This provision does not pertain to any particular denomination, and would apply to American Indian religious observances as well as to others.

Complaints

The Agency has a Complaints Office for the purpose of referring civil rights complaints to agencies which have authority to take appropriate actions. There is a separate file for records of religious discrimination complaints, but these have not been categorized by denomination. In the future, the religion involved in the complaint will be noted, and will be traceable should the need arise.

Complaints lodged with regional office staff are routinely forwarded to the Washington, D.C. Office. On occasion, staff will be in a position to provide more immediate assistance, and will do so on an informal basis. For example, some regional office staff have assisted with complaints involving interferance with Indian religious observances in prisions.

Projects

Based on our review of past projects, and current planning process there have been no projects nor are any currently contemplated designed to specifically address religious discrimination against American Indians. There will, however, be a consultation sponsored by the Commission in April 1979 to learn more about the nature and extent of religious discrimination. A consultation is a tool used by the Commission to assemble persons knowledgeable in a specific civil rights area and to hear their views and suggestions. It is expected that the consultation will provide a basis for future Commission studies or perhaps hearings on the subject of religious discrimination. There will be two presentations at the consultation on the issue of religious discrimination against American Indians.

Clearinghouse Functions

The Commission's statute authorizes the agency to act as a clearinghouse for civil rights information. Among the vehicles currently used to perform this function are the Civil Rights Clearinghouse Library located at the Commission's headquarters, the Civil Rights Digest (a quarterly magazine) and Clearinghouse reports issued by the Agency on various civil rights issues. The Commission clearly has the statutory authority to use all of these means to communicate to the public facts and issues involving religious discrimination against American Indians. To date, the only clearinghouse publication which has dealt with American Indian religious freedom is the American Indian Civil Rights Handbook. This publication, which is now being updated, is intended as a general guide to Federal civil rights laws and their applicability to Indian people living on and off reservations.

Publication of articles or documents specifically dealing with the issue of religious discrimination against Indians could be a useful contribution of this Commission. Suggestions by the Task Force involving Indian religious issues would be considered by this agency for publication as appropriate.

DOE Form AD-10A
(12-77)

U.S. DEPARTMENT OF ENERGY

memorandum

DATE: March 30, 1979

REPLY TO ATTN OF: Kathryn Harris Tijerina KHT
Specialist for Indian Affairs/IR

SUBJECT: Religious Freedom for American Indians

TO: Susan Harjo
Special Assistant to the Assistant Secretary
Bureau of Indian Affairs/DOI

The attached is our initial effort for review and submission to the Inter-agency Task Force on Indian Religious Freedom.

Attachment

RELIGIOUS FREEDOM FOR AMERICAN INDIANS

For purposes of the Inter-agency Task Force on Indian Religious Freedom, the Department of Energy has identified the protection of sacred sites as a potential problem area during the evaluation of procedures required in the American Indian Religious Freedom Act, Public Law 95-341, 42 U.S.C. §1996. To avoid in a systematic manner future religious infringements, the Department is considering as a possible approach the following process, either as a regulation or as an internal issuance.

The Department of Energy is interested in seeing that the free exercise of religion is protected efficiently without setting up an unnecessarily cumbersome mechanism. Therefore, it seems likely that the process will be integrated into the environmental review process which is already established, perhaps as part of the Environmental Impact Statement. The process would likely apply to both substantial involvement by DOE or direct authority for DOE's proposed activity which affects any specific site for which an environmental review is required.

Before the Department of Energy would proceed with its proposed activity an investigation would be made to ascertain if the site at issue is related to the religious rites or ceremonies or is a sacred site of any traditional religion which is currently being sincerely practiced by any American Indian, Eskimo, Aleut and Native Hawaiian.

If the investigation finds indications that the site is currently a subject of religious practices, then the native traditional religious leaders shall be consulted in order to determine whether the Department's proposed action would infringe on the free exercise of religion in any way and to gain an understanding of any impact on the Native American traditional religions. We foresee that the most difficult issue for the Department will be whether its proposed alteration of a site would deny access to a sacred site or otherwise infringe on the free exercise of religion.

If consultation indicates that the proposed Department action may infringe on the free exercise of religion, then alternate plans will be prepared with additional consultation with the native traditional religious leaders. Alternate plans which do not infringe on the free exercise of religion will be examined to determine whether they adequately meet the goals of the Department of Energy for the site.

The DOE will make all deliberate effort to adopt a course of action consistent with the policy enunciated in P.L. 95-341. We are very aware of the rulings of the United States Supreme Court that the Federal government may not abridge the free exercise of religion unless there is a compelling governmental interest at stake.

If no alternative is feasible and DOE finds upon consultation that its proposed action would deny the free exercise of religion, then the difficult question must be asked, how crucial is the project. To safeguard against the answer being made by the program people most intimately involved in the project, the finding will be made within the environmental review, as previously noted. Within the DOE the Assistant Secretary for Environment is structurally separate from the major program offices.

If the DOE's proposed action is deemed to be compelling and must proceed, then the findings and justification would be reviewed by the IR Secretariat which includes the Indian Affairs Office. Then the findings and justifications, accompanied by the Intergovernmental and Institutional Relations report, will be forwarded to the Secretary for his written approval before a final action is taken.

Upon the Secretary's final approval notice will be given. The findings and justification will be published and communicated to the native traditional religious leaders or other concerned parties.

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

MANPOWER,
RESERVE AFFAIRS
AND LOGISTICS
(Equal Opportunity)

22 MAR 1979

The Honorable Cecil B. Andrus
Secretary of the Interior
U.S. Department of the Interior
Office of the Secretary
Washington, D.C. 20240

Dear Secretary Andrus:

This responds to your memorandum of January 26, 1979, concerning implementation of the American Indian Religious Freedom Act of 1978 (P.L. 95-341).

The Department of Defense has completed a department-wide survey of all programs, policies, regulations, etc., in an effort to determine which, if any, adversely affect the ability of Native Americans to exercise their religious cultural rights and practices. We have identified only two items which affect, or which may affect, the ability of Native Americans to exercise their religious rights:

(a) The Department of the Navy currently restricts access to two military installations (China Lake, California and a small island 25 miles off the coast of Maui, Hawaii) which are claimed to be religious sites by American Indians and Native Hawaiians, respectively. In both instances, the Department of the Navy has been working aggressively with representatives from each group to reach a solution. The Navy uses these designated areas for missile and bomb impact areas.

(b) The Department of the Army Pamphlet No. 165-13, "Religious Requirements and Practices," identifies the use of peyote by the Native American Church in their religious practices. The use of peyote, a consciousness altering substance, is contrary to Armed Forces regulations relating to drugs and alcohol.

Mr. Manuel Oliverez of this office will represent the Department of Defense on the Interagency Task Force to Prepare the Report to the Congress on Implementation of the American Religious Freedom Act of 1978 (P.L. 95-341).

We will continue to review and monitor future regulations, etc., of this department to insure compliance with P.L. 95-341.

Sincerely,

Kathleen Carpenter

M. Kathleen Carpenter
Deputy Assistant Secretary

UNITED STATES GOVERNMENT

Memorandum

LIBRARY OF CONGRESS

TO : Secretary of the Interior

DATE: March 16, 1979

FROM : Alan Jabbour
Director, American Folklife Center

Deputy director

SUBJECT: Internal Review and Recommendations Pertaining to Implementation of the American Indian Religious Freedom Act of 1978.

The American Indian Religious Freedom Act of 1978 is very much in accord with the stated purposes of the American Folklife Preservation Act of 1976 (P.L. 94-201) to "preserve and present American folklife." Native Americans are a very important element in American folklife, and they have contributed greatly to the cultural richness of the Nation.

The American Folklife Center firmly believes that the religious rights and cultural integrity of Native Americans are in need of preservation. None of the provisions of the Center's enabling legislation interferes with the intended purpose of the American Indian Religious Freedom Act. In fact, our authority directs us to assist in the accomplishment of the purposes of this declaration, within existing personnel and financial resources of the Center at the Library of Congress.

It is our view and that of the folklife community that Native Americans be encouraged and assisted in preserving their religious and tribal beliefs and customs for present and future generations. One useful approach is through orderly and thorough documentation of these traditions.

The Center is anxious to encourage the preservation of these traditions primarily at the local level and in regional or national archives when consistent with the policies of tribal leaders. The Library of Congress with the financial assistance of the Bureau of Indian Affairs is undertaking a major project to transfer approximately 3,000 wax cylinder recordings to magnetic tape as part of an effort to preserve these recordings which contain in large part materials concerning Native American traditions. The cylinders are the property of the Library, the Smithsonian, and the National Archives. When the duplication is completed, the collection will be maintained by the Library and, in addition, copies will be made available to appropriate tribal institutions.

RECEIVED
3/19/79

BUY U.S. SAVINGS BONDS THROUGH THE PAYROLL PLAN

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

[illegible] 79

REFER TO

The Honorable
Forrest J. Gerard
Assistant Secretary of Interior
Washington, D. C. 20240

Dear Mr. Gerard:

This is in response to Secretary Andrus' memorandum of January 26, 1979, regarding implementation of the American Indian Religious Freedom Act of 1978 and your letter of March 5, 1979, on the same subject.

As the designated representative to the Interagency Task Force from the Treasury Department, United States Customs Service, I am reporting the steps which the Customs Service has undertaken to implement the Act since it was signed into law by President Carter on August 11, 1978.

On September 15, 1978, the Commissioner of Customs, Robert E. Chasen, issued a policy statement entitled "Policy to Protect and Preserve American Indian Religious Freedom." The policy statement also transmitted a copy of the Joint Resolution signed by the President together with the press release of the White House on the subject. A copy of that policy statement is enclosed for your information and ready reference.

In that policy statement, the Commissioner directed all Port Directors, District Directors and Supervisory Customs Inspectors, who have Customs officers working under their supervision who are responsible for examining and clearing articles accompanying American Indians crossing our land borders, to make certain that Customs officers working under their supervision are fully aware of this Federal policy of protecting and preserving for American Indians their inherent right to believe and practice their traditional religion. They are instructed to institute measures to assure that such Customs officers are made aware (or more aware) of the traditional Indian beliefs and practices in order to insure that, in the course of their examination for Customs purposes, they treat more sensitively the various articles that are used by American Indians in the exercise of their religious and cultural beliefs.

To the extent that the insensitivity which has sometimes led to embarrassment and frustration on the part of American Indians is traceable to a lack of understanding or knowledge of these matters on the part of some of our Customs officers, I believe that this directive of the Commissioner of Customs will go a long way toward resolving that problem for the future.

The policy statement also brings to the attention of Customs officers that there has been established not only a Customs Indian Affairs Committee but also an Interagency Task Force which will attempt to identify and define problem areas more precisely, to identify and perhaps catalogue the various articles and objects which have religious significance to the respective Indian tribes, and to have policies and procedures reevaluated in consultation with Native traditional religious leaders in order to determine what changes could or should be made in order to protect and preserve Native American Indian religious cultural rights and practices.

We believe that the Interagency Task Force can play a most significant role in assisting the Customs Service to perfect additional procedures to implement the American Indian Religious Freedom Act. If, for example, we were to prepare an appropriate guidebook or manual for our Customs officers concerning the subject of sensitive treatment or handling of sacred articles and medicine bundles in the course of Customs examintion, it would be necessary for us to identify such objects, at least in a general manner. At the same time, we understand that certain Native traditional religious leaders might be seriously offended if we were to use photographs of sacred articles or medicine bundles for such purpose. On the other hand,it is conceivable that if approached and presented properly, the Native traditional religious leaders might consent to the use of some representative photographs or illustrations if they fully understand the need and purpose to which they will be put. In this regard, the task force could serve as an intermediary between Customs and such traditional leaders in an effort to obtain their consent.

Furthermore, to assist us in informing Customs officers of the various kinds of natural objects which have a religious purpose and significance to Native Americans, we would like to compile as complete a listing of such articles as possible. A partial list of Indian Religious Articles was admitted into the record made at the hearings on the Joint Resolution before the United States Senate

Select Committee on Indian Affairs on February 24 and 27, 1978. A copy is enclosed for your information and ready reference. We would like to submit this list to the Native traditional leaders for their review and comment, together with a request that they add to that list any articles which they believe should be included. Perhaps the task force could also serve as the intermediary with the Native traditional leaders for such purpose. We would be able to provide the task force with reprints of the list for distribution to the traditional leaders.

As indicated in the policy statement issued by Commissioner Chasen, a Customs Committee on American Indian Affairs has been established under the Chairmanship of Albert G. Bergesen, Regional Commissioner for the Los Angeles Region. I also serve on that Committee as its legal advisor and Washington representative. Other members represent each of the Customs regions where Indians cross the land borders, i.e., Boston, Chicago, San Francisco, Los Angeles and Houston. The names of the Committee members, their addresses and a map reflecting the geographical alignment of our regional structure is enclosed.

The first meeting of the Committee was organizational in nature. It was held in Albuquerque, New Mexico, on July 13, 1978, where representatives of the American Indian Law Center and the Native American Rights Fund provided an excellent background briefing to the committee. It was decided that future meetings of the Committee should be held in different sections of the country so that as many tribal reprsentatives as possible would have an opportunity to surface local problems they may be having with Customs officers upon crossing the border.

The second meeting of the Customs committee was held in Burlington, Vermont, on November 29 and 30, 1978. Twenty-six Indian participants attended together with the local Associate Regional Commissioner of the Immigration and Naturalization Service and two representatives from the Canadian Department of Revenue -- the Canadian counterpart of the U.S. Customs Service. A list of the guest participants is enclosed for your information.

The third meeting of the Customs Committee was held in Tucson, Arizona, on February 13 and 14, 1979. Sixty-seven Indian representatives participated together with representatives from the Immigration and Naturalization Service, Department of Agriculture, Bureau of Indian Affairs, American Indian Law Center, Native American Rights Fund, and the offices of Senator Barry Goldwater and Congressman Morris Udall. When a typewriten list of attendees is available, I will forward it for your information.

A fourth meeting of the Committee is presently scheduled for mid-June 1979 in Great Falls, Montana. The following meeting is to be held at a yet-to-be-determined site somewhere in the mid-West near the United States-Canadian border.

Each of the regional meetings held to date has been very productive, particularly insofar as having served as a catalyst for the expression of apparently long-held grievances on the part of the respective Indian tribes or bands represented. A dialogue or communications link has been established with dedicated Indian representatives who have brought to our attention certain problems which should be addressed and, hopefully, resolved. Sometimes the problem was merely a lack of uniformity in the application of established rules and procedures on the part of Customs officers in a particular port of entry. Wherever this was brought to our attention, steps were taken to correct the matter and to assure uniformity in the future. Sometimes the problem stemmed from an unawareness on the part of some Indians of the full extent of their rights as returning residents to bring articles with them into the United States or that they could register valuable personal possessions with Customs before leaving the United States in order to avoid any hassle or possible assessment of Customs duty on their return.

In this regard, we had a news release prepared which highlights the daily and monthly entitlements to exemptions from payment of duty and similar rights which would be of particular interest to residents who live at or near the border and cross into Canada or Mexico on a frequent or even daily basis. We disseminated copies of this news release at the Tucson meeting with the hope that it might be published in tribal or other newspapers that are circulated amongst Indians. We could make additional copies available for a wider distribution if the task force has access to an mailing list of publishers of such newspapers.

At each of the regional meetings, a local Customs representative was designated as a contact point available to Indian representatives whenever a problem with Customs officers arises in that particular border area. As noted earlier, we believe that most problems that have been expressed to date can be resolved locally. In the event it can not be resolved at that level then it will, of course, be elevated to an appropriate policy-making level for resolution.

Only two problems have surfaced so far which have not been able to be completely resolved at the local level. One involves the manner and extent of examination of medicine bundles and sacred articles which, as noted above, is being addressed at the national level. The other involves the long-held grievance of Indians on both sides of the United States-Canadian border that rights given them under the Jay Treaty to cross and recross the border freely and to carry personal goods duty free across such borders have been unlawfully abrogated. This subject was discussed at some length at both the Burlington and Tucson meetings. The Indian representatives most directly concerned have expressed the hope that this particular subject will be included in the report to the President, together with a recommendation that appropriate corrective legislation to restore such rights be enacted.

If you have any questions concerning any of the foregoing I will be happy to respond. I can be reached by telephone at 566-5476. I look forward to seeing you at the upcoming meeting of the task force on April 2, 1979.

Sincerely yours,

Thaddeus Rojek

Thaddeus Rojek

Enclosures

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

February 26, 1979

OFFICE OF THE SECRETARY

IN REPLY REFER TO:

The Honorable Cecil D. Andrus
Secretary
U.S. Department of the Interior
Washington, D.C. 20240

Dear Mr. Andrus:

Your letter of January 26, 1979 regarding the formation of a task force to prepare the Report to Congress on Implementation of the American Indian Religious Freedom Act of 1978 (P.L. 95-341) has been assigned to this office for reply.

We are in the process of coordinating evaluations and internal reviews at the Department of Housing and Urban Development, and the preparation of recommendations will be completed and mailed to you no later than March 12, 1979.

Thank you for the opportunity to make a substantive contribution to the President's policy which will assure religious freedom for all Americans.

Sincerely yours,

Irvin Santiago
Special Assistant to the Secretary
for Indian and Alaska Native Programs

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JAN 2 6 1979

MEMORANDUM

To: All Federal Departments, Agencies & Instrumentalities

From: Secretary of the Interior

Subject: Task Force to Prepare the Report to the Congress on Implementation of the American Indian Religious Freedom Act of 1978 (P.L.95-341)

The American Indian Religious Freedom Act of 1978 sets forth the policy of the United States to protect and preserve the inherent right of American Indian, Eskimo, Aleut and Native Hawaiian people to believe, express and exercise their traditional religions.

The Act calls for an evaluation of the Federal agencies' policies and procedures, as they affect the religious rights and cultural integrity of Native Americans, and requires that the President report the agencies' findings and recommendations to the Congress in August of this year. The preparation of this report accords us the opportunity to rethink antiquated policies, to develop uniform approaches and procedures, and to measure existing practices against practical experience.

Specifically, the Act mandates that: 1) the Federal departments, agencies and other instrumentalities responsible for administering relevant laws evaluate their policies and procedures, in order to determine appropriate changes necessary to protect and preserve Native American religious cultural rights and practices; 2) the evaluation be conducted in consultation with Native traditional religious leaders; and 3) the President report to the Congress the results of the evaluation, including any changes which were made in administrative policies and procedures, and any recommendations for legislative action, within twelve months after approval.

Upon signing S.J. Res. 102 into law, the President directed that "the Secretary of the Interior establish a task force comprised of representatives of the appropriate Federal agencies (to) prepare the report to the Congress required by this Resolution, in consultation with Native leaders." The report will be based upon the internal reviews of the appropriate agencies and the work of the Task Force will be undertaken in consultation with Native religious and tribal leaders.

If any office within your jurisdiction falls within the category of appropriate agencies, I am requesting that:

1. The attached form be returned no later than February 12, 1979, along with any questions you may have regarding the mandate or work of the Task Force (all questions will be answered upon receipt of form)

2. The internal reviews and recommendations be completed and sent to me no later than March 12, 1979

3. The policy-level designee(s) be available for a Task Force meeting on March 26, 1979.

I look forward to working with the Task Force on the report to the Congress. Thank you for your cooperation in this important effort.

Cecil D. Andrus

Secretary of the Interior

Attachment

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

PLEASE RETURN THIS FORM NO LATER THAN FEBRUARY 12, 1979, TO THE ATTENTION OF ASSISTANT SECRETARY - INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C. 20240 (CODE AS-IA 01/S)

1. The ______________________________
(name of department, agency or instrumentality)
does not have policies, procedures, guidelines, rules, regulations or statutory authorization relevant to American Indians, Alaska Natives or Native Hawaiians, within the context of P.L. 95-341.

2. The ______________________________
(name or department, agency or instrumentality)
is an appropriate Federal entity with policies, procedures, guidelines, rules, regulations or statutory authority relevant to American Indians, Alaska Natives or Native Hawaiians, within the context of P.L. 95-341.

3. The following person(s) will serve as the policy-level designee(s) on the Task Force to review government-wide recommendations and to plan for preparation of the Report to the Congress on Implementation of the American Indian Religious Freedom Act of 1978.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

PROJECTED SCHEDULE FOR PREPARATION OF THE REPORT TO THE CONGRESS ON IMPLEMENTATION OF THE AMERICAN INDIAN RELIGIOUS FREEDOM ACT OF 1978

Completion and receipt of Task Force designation forms	February 12, 1979
Completion and receipt of all internal reviews, recommendations and related material	March 12, 1979
Digest of all reviews and recommendations and overview report to Task Force Members	March 12-21, 1979
Meeting of Task Force to plan for preparation of draft report and to meet with Native traditional religious leaders	March 26, 1979
Preparation of draft report and distribution to Task Force Members for review and comment	March 27 - April 30, 1979
Meeting of Task Force to review draft report	May 7, 1979
Draft report circulated for reveiw and comment by Native traditional religious leaders and Indian tribal leaders	May 21, 1979
Task Force meeting to prepare final report, based upon consultation and reviews, for submittal to the President	June 25, 1979
Report submitted to the President	July 16, 1979
Report submitted to the Congress	August 10, 1979

Appendix C

Key to Tables of Issues Raised in Consultation

Examples of Specific Problems in the Use of Federal Lands (1 - 22)

Examples of Specific Problems Relating to Cemeteries (1 - 7)

Examples of Specific Problems Relating to Sacred Objects (1 - 7)

Examples of Specific Problems Relating to Border Crossings (1 - 6)

Examples of Specific Problems Relating to Museums (1 - 3)

Examples of Specific Problems Relating to Ceremonies and Traditional Rites (1 - 13)

List and Summary of Written Submissions for the Record

Memorandum, Interior Assistant Secretary for Indian Affairs, Scheduled Consultations, May 25, 1979

Notice, Schedule of Religious Freedom Consultations, May 28, 1979

Notice of Consultation, Cheyenne River Swiftbird Project, Cheyenne River Sioux Reservation, South Dakota, June 7-8, 1979

Notice of Consultation, Minnesota Chippewa Tribal Chambers, Cass Lake, Minnesota, June 11-12, 1979

Memorandum, National Park Service, Staff Archaeologist's Report of Cass Lake Consultation, July 12, 1979

Notice of Consultation, Honolulu, Hawaii, June 13, 1979

Memorandum, National Park Service, Hawaii State Director's Report of Hawaii Consultation, July 11, 1979

Notice of Consultation, Chief Joseph Cultural Center, Confederated Tribes of the Colville Reservation, Nespelem, Washington, June 14-15, 1979

Memorandum, Seattle Naval Legal Services Office, Report of Colville Consultation, July 3, 1979

Memorandum, Olympia Fish and Wildlife Service Area Office, Report of Colville Consultation, June 28, 1979

Memorandum, National Park Service, Staff Archaeologist's Report of Colville Consultation, July 18, 1979

Notice of Consultation, U.S. Customs Service Committee on Indian Affairs, Great Falls, Montana, June 19-20, 1979

Notice of Consultation, Pueblo of Zuni, Zuni, New Mexico, June 22-23, 1979

Memorandum, National Park Service, Staff Archaeologist's Report of Zuni Consultation, July 13, 1979

Notice of Consultation, University of Oklahoma, Norman, Oklahoma, June 26-27, 1979

Notice of Consultation, Qualla Civic Center, Eastern Band of Cherokee Indians - Qualla Boundary, Cherokee, North Carolina, June 29, 1979

Memorandum, National Park Service, Great Smoky Mountains Superintendent's Report of Cherokee Consultation, June 29, 1979

Notice of Consultation, Reno-Sparks Tribal Facilities Building, Reno, Nevada, June 30, 1979

Memorandum, National Park Service, Western Regional Archaeologist's Report of Reno Consultation July 24, 1979

Memorandum, Juneau Area Office, Bureau of Indian Affairs, Area Director's Report of Alaska Consultation (July 12, 1979), July 19, 1979

Survey to Native Americans on P.L. 95-341 Implementation, NARF-AILC Religious Freedom Project, September 14, 1978

KEY TO TABLES

CONSULTATIONS
A ... Anchorage, Alaska, July 12, 1979
C ... Colville Reservation, Nespelem, Washington, June 14-15, 1979
G ... Great Falls, Montana, June 19-20, 1979
H ... Honolulu, Hawaii, June 13, 1979
M ... Cass Lake, Minnesota, June 11-12, 1979
N ... Norman, Oklahoma, June 26, 1979
O ... Norman, Oklahoma, June 27, 1979
Q ... Cherokee, North Carolina, June 29, 1979
R ... Reno-Sparks, Nevada, June 30, 1979
S ... Swiftbird, South Dakota, June 7-8, 1979
Z ... Zuni, New Mexico, June 22-23, 1979

Number following key letter refers to page of consultation transcript.

DOCUMENTATION D ... Written Submittals

Number following key letter refers to document index number.

EXAMPLES OF SPECIFIC PROBLEMS IN THE USE OF FEDERAL LANDS

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Kiowa		successful implementation of P.L. 95-341 requires permanent consultative mechanism		A:11
Alaska	Eskimo	religion endangered by depletion, theft of natural resources		A:16
Alaska	Eskimo	religion has natural resource base, which is threatened		A:23
Alaska	Caribou Band	low priority of subsistence use in d-2 land allocations, ANCSA implementation		A:34
Alaska	Athabascan	cabin threatened by park expansion proposal - NPS		A:39
Alaska	Alaska Native	dam project may harm traditional religion and culture (ACE)		A:54
Alaska	Alaska Native	federally-granted easments on Native land damage subsistence vegetation (BLM)		A:57
Alaska	Alaska Native	ANCSA land with sacred site subject to taxation		A:57
Alaska	Alaska Native	HUD regulations prohibit traditional housing; ignore cultural values in design	regulations under review	A:57
Barrow, Alaska	Eskimo	whaling and caribou hunting regulations violate traditional requirements (NOAA/FWS)		A:65
Beaufort Sea, Alaska	Eskimo	off-shore drilling disrupts whale migrations (DOI)		A:68 D:12

LAND (2)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
North Slope, Alaska	Eskimo	industrial pollution threatens subsistence		A:70
Alaska	Eskimo	animals will vanish if hunting not carefully conducted according to tradition		A:72 D:16
Alaska	Eskimo	lack of access to beluga whales, to ugruk (NMFS/NOAA)		A:73 D:18
Alaska	Eskimo	convicted for taking moose for ceremonial purposes	in litigation	A:76
Alaska	Eskimo	regulation of ritual hunting and fishing (FWS/NOAA)		A:86
Alaska	Alaska Native	fish & game regulations violate Native custom		A:112
California	Pomo	tribes thrown off the land		A:114
California	Pomo	regulations hinder traditional subsistence (FWS)		A:114
California	Pomo	industrial pollution threatens water, fish		A:115
Point Conception, California	Chumash	LNG terminal on sacred site		A:116 & D:105
North Slope, Alaska	Eskimo	National Petroleum Reserve, vast areas off-limits, with Inupiat traditional fishing camps, other uses		A:120

LAND (3)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Anaktuvuk Pass, Alaska	Eskimo	had to resort to zoning power to override BLM permit for maintenance camps on sacred site		A:121
Alaska	Eskimo	spring whaling ceremony cancelled by bowhead whale moratorium	IWC action (US domestic exemption)	A:122 D:13,15
Mt. McKinley, Alaska	Athabascan	return mountain and park to its original name, Denali		A:125
Oklahoma	Kiowa	lack of access to sites in Wichita National Wildlife Refuge	access by FWS permit	N:14
Ft. Sill, Oklahoma	Kiowa	lack of access to sites, Medicine Bluff used as Army training area		N:14,136
Texas	Kiowa	peyote lands in private ownership of oil companies, ranchers, dealers; land closed to Indian harvesting		N:37
Texas	Kiowa	selling peyote to hippies	DEA monitoring	N:37
McAlester Ammo Depot, Okla.	Kickapoo	can't take deer because of Army adherence to state game laws under 10 USC 2671		N:45
Oklahoma	Kickapoo	gathering reeds	access by FWS and FS permit	N:49
Texas	Ute	federal laws don't extend to private peyote fields		N:120

LAND (4)

LOCATION/TRIBE/GROUP		PROBLEM	STATUS	REF
Wichita Mountains, Okla.	Wichita-Caddo	FS officers interfered with religious retreat	special use permits available	N:136
Wichita NWR	Wichita-Caddo	roundup of buffalo, deer, elk not offered to Indians	FWS examining policy and procedures	N:136
Utah	Ute	lack of access to gathering sites in FS lands	access by special use permit	O:8
Utah	Ute	access to sites not protected, complaints sworn by non-Indian against Utes		O:13
Oklahoma	Cherokee	lack of access to sites		O:24
Oklahoma	Muskogee	BIA abandonment of tribal town system	litigated in favor of tribal town system (Harjo v. Kleppe)	O:54,62
Oklahoma	Muskogee	lack of access to private land for hunting, gathering		O:57
Oklahoma	Muskogee	having to pay private landowners for use of tribal grounds		O:93
Oklahoma	Muskogee	gathering herbs on private land		O:95
Oklahoma	Muskogee	gathering heron feathers	FWS review	O:133
Bear Butte, South Dakota	Cheyenne	lack of access to site; need of protection from recreational uses, commercial development		O:142,150 D:11

LAND (5)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Oklahoma	Cheyenne	need protection for sacred sites and ceremonial grounds, and possession of Bear Butte, SD		O:149
Oklahoma	Cheyenne	hunting and gathering on former reservation land		O:150
New Mexico	AILSA	competition for land use at sites		D:1
Oklahoma	Kickapoo	request to state to hunt deer out of season		D:8
Oklahoma	Kickapoo	request for deer for Green Corn Dance and Spring Feast ceremonies		D:9
Oklahoma	Cheyenne	hunting and gathering requirements for Tsistsistas (Cheyenne) ceremony		D:11
Oklahoma	Cheyenne	more stringent laws for sport hunting and fishing		D:11
New Mexico	Isleta Pueblo	access to sites prevented by land speculation		R:5
New Mexico	Isleta Pueblo	lack of access to mountaintops off-reservation		R:7
New Mexico	Isleta Pueblo	ownership of sites by dint of original use not honored		R:8
Nevada		access to herbal gathering places		R:12
Yosemite National Park	Yosemite	NPS consultation deadline on development too short		R:25

LAND (6)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Nevada	Washoe	state opposition to devolution of BLM land to tribes		R:36,45
Nevada	Washoe	lack of federal control on state and private land		R:37
Nevada	Washoe	state hunting and fishing regulations enforced on reservation	in litigation	R:43
Nevada	Washoe	BLM uncooperative in discussing consolidation of tribal jurisdiction		R:44
Pine Nut Mt., Nevada	Washoe	BLM uncooperative in assisting in tribal wildlife management planning		R:47
Nevada	Washoe	non-Indians poaching Christmas trees on reservation		R:62
Oregon	Paiute-Shoshone	land problems relative to Klamath termination and Edison Chiloquin (Klamath Indian who didn't take termination money, wants homeland)	FS permit for Chiloquin remaining on land - administrative and legislative conveyance being explored	R:65 D:106
Nevada		local agreements often contravened by agency chain of command		R:73
Reno, Nevada	Reno-Sparks	sweat lodge needs single-use fire permit under city outdoor barbecue regulations		R:85
North Carolina	Eastern Cherokee	preservation of sites		B

LAND (7)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Kahoolawe Island, Hawaii	Native Hawaiian	site used as bombing range	in litigation, US Navy	H:14,32 H:102,154 D:84,89
Koa, Hawaii	Native Hawaiian	access, destruction by aerial bombardment		H:21
Volcanoes National Park	Native Hawaiian	no place to worship Pele, NPS restrictions		H:24
Makua Valley, Oahu, Hawaii	Native Hawaiian	use as bombing range		H:32
Hawaii	Native Hawaiian	religious sites are off-limits (NPS)		H:31,32
Hawaii	Native Hawaiian	geothermal development threatens Pele, fire god		H:35
Hawaii	Native Hawaiian	lack of access for gathering places, ceremonies (NPS)		H:35
Kaneohe MCAS, Kahoolawe Is., Hawaii	Native Hawaiian	lack of access for Kahuna leaders	US Navy permits access	H:68 B D:86
Hawaii	Native Hawaiian	bombing of islands		H:86
Hawaii	Native Hawaiian	no National Register sites of Native Hawaiian religious significance		H:120
Hawaii	Native Hawaiian	no Native sites under Historic Preservation Act		H:120

LAND (8)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Hawaii	Native Hawaiian	religious site destruction, no federal rehabilitation assistance		H:122
Hawaii	Native Hawaiian	lack of access for Natives; too much access for non-Natives		H:122
Hawaii	Native Hawaiian	lack of access to gathering indigenous resources		H:122
Hawaii	Native Hawaiian	water resources being dissipated, affront to Kane, water god		H:141
Kiahole Point, Hawaii	Native Hawaiian	lost title to Ulumau Village		H:148
Montana	Crow	roads and dams in sacred sites		S
Bear Butte, SD	Sioux	tourists invade privacy of ceremonies		S
Black Hills, SD	Sioux	uranium mining threatens sacred sites		S M:20
Black Hills, SD	Sioux	Black Hills not for sale	court of claims decision to award cash	S
Black Hills, SD	Sioux	lack of access to sites	FS permit pending	S
Southwest	Native American Church	access to peyote on federal land		S
Texas	Kiowa	access to peyote land foreclosed by wilderness designation proposal		S

LAND (9)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Bear Butte & Black Hills, SD	Sioux	lack of privacy from tourists		S
	AILC/NARF	right to gather and use indigenous natural products		S
	AILC/NARF	Native customary laws on sites to be recognized as law		S
Minnesota		NPS doesn't want Indians in to mess up the park		M:13
Various sites		industrial pollution threatens sites		M:20
Northeast Arizona		power plant effluent threatens sites		M:20
Arizona		pollution kills medicine plants		M:20
Minnesota		lack of access to deer on FS land \\		M:34
Mille Lacs Res., Minnesota	Chippewa	man arrested for spearfishing for funeral ceremony		M:45
Guadalupe Peak, Organ Mountain, Three Sisters, Oscura Peak, NM	Mescalero Apache	lack of access to sites		Z:8
White Sands, New Mexico	Mescalero Apache	lack of access to sites; lack of access to sage gathering, other plants, rocks, soils		Z:10,21

LAND (10)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
New Mexico	Mescalero Apache	lack of access to sites for yucca, mosquero, Indian bananas, sumac berries, dirt, rocks		S:9
New Mexico	Mescalero Apache	lack of access to mesquite beans along highways		S:11
New Mexico	Taos Pueblo	lack of access to ceremonial materials		S:20
Lincoln National Forest	Mescalero Apache	Forest Service limits access to Guadalupe Peak		S:21
New Mexico	Santa Clara Pueblo	access to sites not to be qualified by excessive regulation		S:23
New Mexico	Santa Clara Pueblo	access to sites for collecting feathers and parts limited by conservation laws	FWS revising procedures	S:24
Jemez Mountain, New Mexico	Santa Clara Pueblo	geothermal development threatens sacred site	EIS copies to Pueblos, tours of site	S:24
Minnesota	Chippewa	FS/NPS hunting and fishing arrests; same laws apply equally to sport and subsistence		M:48
Nett Lake Res., Minnesota	Chippewa	state game laws apply on reservation land		M:50
Twin Lake-Wild Rice River, Minnesota	Chippewa	dam project adjacent to reservation threatens ricing, fishing, hunting; no prior consulation (ACE)		M:52

LAND (11)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Minnesota	Chippewa	access to ceremonial land off-reservation conflicts with state laws		M:54
Minnesota	Chippewa	modern tribal development over historic sites should be unhampered by preservation regulations		M:82
Minneapolis, Minnesota	Sioux	post office parking ramp located on 1000 year old campsite without impact statement or consultation		M:83
Washington	Okanogan-Colville	prayer sites, gathering sites have 'no trespass' signs		C:6
Washington		need access to tipi poles on FS land		C:65
New Mexico	Mescalero Apache	access to sites for subsistence and rites	Park Service Special Directive 78-1 accommodates access for gathering	S:8
New Mexico	Santa Clara Pueblo	fear of eventual foreign ownership of sites		S:25
Santa Fe, Cibola National Forest, NM	San Felipe Pueblo	lack of access to sites	access by FS permit	S:30
Jemez Mountain, New Mexico	San Felipe Pueblo	lack of access to sites		S:30
Cibola NNR, NM	San Felipe Pueblo	lack of access to sites		S:30

LAND (12)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
New Mexico	San Felipe Pueblo	lack of access to animals for ceremonial use		S:30
New Mexico	San Felipe Pueblo	development threatens site		S:32
New Mexico	Santa Clara Pueblo	lack of access to animals for ceremonial use on federal land		S:44
New Mexico	Santa Clara Pueblo	state game laws honored on federal land, limiting access for ceremonial use		S:39,43
New Mexico, Arizona	Navajo	lack of access to animals for ceremonial use on federal land		S:44
New Mexico	Santa Clara Pueblo	resource development threatens sites		S:48
Arizona	Hopi	lack of access to sites		S:62,81
San Francisco Peaks, Arizona	Hopi	use and restoration of site; development threatens site	FS decision to permit ski development on administrative appeal	S:63,72 S:87,220
Arizona	Hopi	private owners charge fees for ceremonial use of property		S:63
Arizona	Hopi	denied access to Douglas Fir boughs		S:71,85
Arizona	Hopi	lack of access to sites for tobacco and herbal medicine		S:85

LAND (13)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Arizona	Hopi	lack of access to clay and mineral sites		S:85
Hopi	Hopi	federally-assisted housing built on sacred site		S:95
Hopi	Hopi	federally-funded water and sewer lines disrupt site use and preservation		S:95
Hoteville, AZ	Hopi	civic building on sacred land		S:95 D:3
Arizona	Hopi	federal and tribal governments don't recognize and consult with religious leaders		S:96
Arizona	Hopi	BIA development programs don't respond to traditional needs		S:96
New Mexico	Jicarilla Apache	lack of access to sacred pottery clay, herbs, stones on state and private land		S:104
Mount Taylor, Mt. Flagstaff, Eagle Peak, White Mountain	Acoma Pueblo	lack of access to sites		S:125
New Mexico	Acoma Pueblo	residential development on sites		S:126
New Mexico	Acoma Pueblo	tourist trespass on sites		S:127

LAND (14)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Four Corners, NM,AZ,CO,UT	Navajo	mineral resource development threatens sites		S:132
Southwest	Navajo	access, development around sacred mountains		S:134
Southwest	Navajo	FS personnel rude to traditional medicine men		S:140
Southwest	Navajo	lack of access; too many interrogations on access for herb-gathering; no simple permanent permit for access		S:141
San Francisco Peaks, AZ	Navajo (Hopi, Zuni, White Mountain Apache)	ski development; non-Indian drinking and carousing at sacred site	FS - administrative appeal	S:146 D:47,58
Colorado	Ute Mountain Ute	holding ceremonies off-reservation		S:152
New Mexico	Santa Clara Pueblo	need protection of and access to 17 mountain peaks		S:158
Redondo Peak	Santa Clara Pueblo	geothermal development may threaten site	DOE consulting	S:159
Six Rivers National Forest, California	Yurok-Hoopa	FS logging and access road, Gasquet-Orleans Road		S:164
Southwest	Zuni	conflict of archaeological and sacred use classifications		S:164

LAND (15)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Grand Canyon National Park	Zuni	lack of access to sites		S:220
mouth of the Little Colorado River	Zuni	access to site for critical ceremonial denied by BLM lessee		S:220
New Mexico	Zuni	no easement rights on pilgrimage path across private range land		S:221
New Mexico	Zuni	problem of revealing location of some sites (fear of vandalism, excavation)		S:222
New Mexico	Zuni	no tribal consultation on federal development: stripmining, roads		S:222
New Mexico	Zuni	lack of access to sites		S:229
New Mexico	Santo Domingo Pueblo	stripmining destroys sites on aboriginal land, on public domain land under Act of 1872		S:245
New Mexico	Santo Domingo Pueblo	erosion of tribal land base		S:248
Trick Falls, Montana	Blackfeet	lack of physical access (NPS)		G:201
Two Medicine Lake, Mont.	Crow	electric fence prevents access to site, prevents game animals from crossing onto reservation	fence emplaced by Crow Tribe to control buffalo herd on reservation	G:201

LAND (16)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Great Bear Wilderness Area, Mont.	Blackfeet	divergent EIS requirements of EPA, NPS, no prior consultation		G:203
Montana	Blackfeet	oil & gas drilling disrupts sites despite 16 USC 480-431		G:206
Montana	Blackfeet	no prior consultation by USGS on sites in path of development		G:211
Montana	Blackfeet	oil wells in midst of traditional tipi ring		G:214
Montana	Blackfeet	trails and roads disrupt sites		G:215
Montana	Peigan (Blood/Blackfeet)	access to Sweetgrass Hills, Cypress Hills, Writing-on-Stone		G:229
Canada	Colville	site development in Canada		G:379
Alaska	Alaska Natives	allotment applications denied by BLM because of conflicting interpretation of private land use	\\	D:20
Washington	Colville	need protection for enumerated sacred sites		D:34
Washington	Colville	ceremonial fishing grounds		D:35
Mount Taylor, New Mexico		uranium mine threatens sacred area		D:47

LAND (17)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Coconino National Forest		commercial logging and cinder mining		D:47
Florida	Miccosukee	lack of access to sites, no tribal control over non-Native access to sites; lack of access to gathering places		D:57
Southwest	Navajo	non-indigenous plants used to reseed stripmined area drive out medicinal herbs		D:58
Mount Taylor	Navajo	lack of access to sites - FS		D:58
Blanca Peak	Navajo	lack of access to sites		D:58
Hesperus Peak	Navajo	lack of access to sites		D:58
Black Mesa, AZ	Navajo	list of native flora		D:58
Washington	Colville	repairs on a dam without Native consultation	\\	C:85
Washington	Colville	fishing, hunting, gathering rights should be guaranteed by treaties		C:111
Columbia River, Washington	Colville	dams on river stopped subsistence salmon fishing		C:125
Chief Joseph Dam, Washington	Colville	ceremonial fishing at base of dam halted by state game officials		C:127

LAND (18)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Washington	Colville	reservation does not share in US v. Washington decision fishing rights		C:128
Washington	Colville	FWS Winthrop fish hatchery no longer takes trout eggs for hatching		C:130
Washington	Colville	logging destroys huckleberry patches		C:141
Star Lake-Bisti, Navajo Reservation	Navajo	BLM environmental impact statement on strip mine failed to consider Religious Freedom Act		D:61
Coconino National Forest		opposing development on San Francisco Peaks		D:63,64 D:71-83
Hawaii	Native Hawaiian	easements to aboriginal areas needed; need inventory of Native religious sites		D:68
Hawaii	Native Hawaiian	NPS' lack of understanding of Native beliefs causes desecration		D:84
Leeward Islands, Hawaii	Native Hawaiian	FWS has 'no trespass' signs at some sites		D:84
Hawaii	Native Hawaiian	Kaula Island used as aerial gunnery range, destroying birds; home of Shark (family aumakua)		D:84
Hawaii	Native Hawaiian	Pearl Harbor off-limits		D:84

LAND (19)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Hawaii	Native Hawaiian	konohikis (relilious oriented fishing rights) denied		D:84
Hawaii	Native Hawaiian	lack of access to sacred sites		D:89,92
Point Conception, California	Chumash	lack of access to site	agreement signed with private owner	D:94
NARF/AILC Religious Freedom Project		lack of access to sites		D:96
NARF/AILC Religious Freedom Project		no laws to protect holy places qua holy places for Native religious use; why cultural problems have prevented officials applying existing statutes to protection of sites		D:97
Washington	Nisqually	lack of access to mountains, to mountain campsites		D:109
Washington	Nisqually	lack of access to huckleberry grounds		D:109
Washington	Nisqually	Forest Service no longer allows access to commercially unusable cedar trees for ceremonial longhouse frames		D:109
Washington	Nisqually	lack of access to shellfish, halibut, seals, whales		D:109

LAND (20)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Wildhorse Reservoir, Nevada	Duck Valley Band	non-Indian opposition to transfer of fishing rights to Indians on reservoir		D:107
Pyramid Lake, Nevada	Washoe	dispute over state fishing permit requirements at site		D:107
Nisqually River, Washington	Nisqually	decline of salmon and steelhead runs		D:109
Alder Dam, Washington	Nisqually	dam failed to provide spring salmon access		D:109
Washington	Nisqually	NMFS promotes saltwater catches which prevent conservation of individual ceremonial runs		D:109
North Fork Skokomish R., and Centralia Diversion, Nisqually R.	Nisqually	artificial hatcheries and diversion of hatching sites to other uses fails to consider traditional ceremonial sites		D:109
Washington	Nisqually	Commerce Dept. fails to regulate ocean troll fleet at expense of ceremonial fish runs		D:109
Fort Lewis, Washington	Nisqually	Muck Creek chum habitat used by US Army as rocket range and tank course		D:109
Washington	Nisqually	lack of access to black carrots, *pehrhe'* roots		D:109

LAND (21)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Southwest Northeast	Hopi Iroquois	jurisdiction on reservation under those whose enforcement against abuse is inadequate and whose understanding of Indian religious needs is minimal; federal jurisdiction should be decreased, tribal jurisdiction increased		S:81,82 D:NFP
New Mexico	19 Pueblos	all lands traditionally occupied and travelled by Pueblos, and ability to commune with those lands, are important to religious practice; any subject federal policy should be applied to all lands, not only isolated sacred spots		D:110
New Mexico	19 Pueblos	need statutory framework for protection of religious practices, lands, objects on same basis as protection for ecologically sensitive areas		D:110
New Mexico	19 Pueblos	agencies need directives for tribal consultation for procedures for unrestricted tribal access to and use of sites, with minimal or no documentation and no permit requirements		D:110
New Mexico	19 Pueblos	need for unrestricted religious ceremonial hunting and fishing, with management reliance on tribal conservation traditions, not artificial quota system		D:110

LAND (22)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
New Mexico	19 Pueblos	need for protection of waters of religious significance, with no federal actions to diminish or degrade natural flows taken without due consultation with affected tribes		D:110
New Mexico	19 Pueblos	need directive to those agencies initiating or approving projects or actions affecting sacred lands or objects to notify and consult with tribes in land-use planning, without limitation to those instances where environmental law applies		D:110
New Mexico	19 Pueblos	Pueblo leaders find no change in federal land-managing agencies' practices since passage of P.L. 95-341; more than Executive Order needed to change attitudes		D:110

EXAMPLES OF SPECIFIC PROBLEMS RELATING TO CEMETERIES

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
South Dakota	Sioux	opposes disinterment		S
Kahoolawe Is., Hawaii	Native Hawaiian	bombing range is Native cemetery	in litigation, Dept of Navy	S
Hawaii	Native Hawaiian	disturbance of burials		S,H:20
Mille Lacs Res., Minnesota	Chippewa	housing development on fee-patent land threatens cemetery		M:63
Hawaii	Native Hawaiian	archaeologists don't get prior approval from Natives on excavations		H:122
Grand Coulee Dam, Washington	Okanogan-Colville	waited 40 years for Bureau of Reclamation to reinter bodies disturbed by dam construction and flooding; remains left in boxes in museum basement		C:3
Washington	Colville	disruption of burials; disinterment due to flooding from dam construction (ACE, BuRec)	Colville/ACE agreement regarding reinterment and disposition of remains	C:49,50
Tulsa, Okla.		BIA referred bodies disturbed by highway construction to Univ. of Okla. without consulting Indians		C:84
Montana	Blackfeet	DHEW funds used to enforce state law reinterring traditional above-ground burials	IHS developing policy	G:194
Montana	Blackfeet	desecration of burials		G:191

CEMETERIES (2)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Northwest	Nez Perce	protection of remains		G:344
Los Angeles	Nez Perce	dealing in skulls; a relative's skull being used as an ashtray		G:345
Southwest	Hopi	tribal anti-vandalism laws don't apply to non-Indians; outside law enforcement agencies fail to enforce their own anti-vandalism statutes	legislation pending	Z:85
New Mexico	Santa Clara Pueblo	excavation and removal of artifacts; HR 1825 not specifically protective of sites off-reservation		Z:112
New Mexico	Zuni	not always prior consultation on site development		Z:173
New Mexico, Arizona	Zuni	site identification based on archaeological, not sacred value; inherent conflict between identification and privacy of use		Z:174
New Mexico	Zuni	sites on private land; sites on state land; unsatisfactory cooperation from state agencies		Z:175
New Mexico	Zuni	art market values encourage vandalism; enforcement problem resulting from Diaz decision	legislation pending	Z:184
New Mexico	Zuni	theft, vandalism, graverobbing		Z:179,231
New Mexico	Zuni	no US implementation of UNESCO cultural property convention		Z:187

CEMETERIES (3)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Aleutian Islands, Alaska	Pribilof Island Aleut	archaeological disinterment, US Army, Forest Service		A:6
Alaska	Alaska Native	archaeological disinterment without consultation		A:55
Alaska	Native	easements on federal land destroy cemetery sites		A:57
California	Pomo	denied access to cemeteries; denied continued use of cemeteries		A:115
Chief Joseph Dam, Washington	Colville	disposition of funerary artifacts	working agreement between Colville and Army Corps of Engineers	D:25
Makua Valley, Hawaii	Native Hawaiian	bombing range; Native trespass convictions; insecticide spraying all on sacred site		H:32
Point Conception, California	Chumash	LNG terminal project threatens cemetery		A:116
Oregon		vandalism		D:37
Link River, Oregon		development on cemetery ground		D:38
Big Bend Dam, SD	Sioux	disinterment for development, Army Corps of Engineers		D:39
Oregon		site disturbed by development		D:40

CEMETERIES (4)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Oregon		disinterment, no reinterment		D:41
Oregon		materials on Oregon burial site protection law		D:42,43 D:45,46
Oregon		administrator of Oregon burial ground protection law has no enforcement power		D:45
Washington	Yakima	special laws on Indian sites insulting; rather enforcement of general graverobbing laws		D:45
Klamath Falls, Oregon		tourist office publicity promotes site vandalism		D:45
Oregon	Cow Creek Umpqua	law has minor penalties, indifferent enforcement		D:45
Alexandria, Indiana		landfill threatens cemetery		D:48
Maryland	Piscataway	NPS denied burial for Chief Turkey Tayac in Piscataway Capital Park	legislation pending	D:50
Lancaster, Pennsylvania		archaeological disinterment		D:51
Pierre, SD	Sioux	landmark cemetery to become housing development		D:52
Florida	Miccosukee	no access to cemeteries for burials; no excavation without prior tribal approval		D:58

CEMETERIES (5)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
New Mexico	Zuni	no protection for off-reservation sites		Z:191
New Mexico	Zuni	archaeologists have no mechanism for consulting with traditional leaders		Z:197
New Mexico	Zuni	no enforcement of site protection laws		Z:199
New Mexico	Zuni	Pueblo antiquities law doesn't extend to non-Indian vandalism, the major cause		Z:200
New Mexico	Zuni	no maintenance of off-reservation sites		Z:231
New Mexico	Zuni	no protection against digging up graves		Z:231
Oklahoma	Southern Cheyenne	disinterment without consent		M:106
Oklahoma	Cherokee	disinterment of remains		O:117
California, Nevada	Yosemite, Washoe	no protection of burials and artifacts by NPS		R:27,33
Nevada	Washoe	insufficient cataloguing and surveying of sites		R:34
North Carolina	Eastern Cherokee	Tellico Dam to flood cemetery sites	TVA to reinter all Cherokee remains	E
North Carolina	Eastern Cherokee	archaeological disinterment	halted 1978, TVA will reinter all Cherokee remains	E

CEMETERIES (6)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Washington	Colville	no ritual reinterment after flooding of cemetery by dam		C:85
Washington	Colville	disturbing burial sites		C:105
Washington	Colville	bodies shouldn't be touched by undertaker for three days		C:108
Washington	Colville	Grand Coulee Dam flooded sites		C:134
Kettle Falls, Washington	Colville	remains from area archaeological sites not reintered with proper traditional ceremony		C:135
Washington	Colville	burial sites on reservoir banks washing away; no proper reinterment		C:143
Coulee City, Washington	Colville	pot hunters vandalizing sites at Coyote's Punch Bowl, Steamboat Rock		C:145
Washington	Colville	cemeteries meant to be permanent		C:149
Marin County, California		urban development endangers Native burial sites		D:62
New Mexico	Zuni	religious values should take precedence over archaeological ones in matters of exhumations; inundation need not be sufficient cause for exhumation; disposition of gravegoods should be controlled by tribe		D:69

CEMETERIES (7)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Oklahoma	Pawnee	disturbances of burial sites		D:70
NARF/AILC Religious Freedom Project		recommendations on treatment of burial sites		D:96
Carson Valley, Nevada	Washoe	sewage wetlands project threatens 12,000 year old Washoe and pre-Washoe burial site		D:108

EXAMPLES OF SPECIFIC PROBLEMS RELATING TO SACRED OBJECTS

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Alaska	Athabascan	conviction for possession of moose for funerary potlatch ceremony (Carlos Frank case)	in litigation, on appeal	A:8, S
Alaska	Eskimo	denied ducks and geese for spring ceremony (FWS)		A:60
Oklahoma		lack of access to eagle feathers	FWS reviewing procedures	M:117
Wichita NWR, Oklahoma	Wichita-Caddo	government roundup of deer, elk, buffalo not available to Indians	FWS developing policy and procedures	M:136
Oklahoma	Arapaho	buffalo hides auctioned by government prepared improperly for ceremonial use	FWS developing policy and procedures	M:152
Oklahoma	Cherokee	soup drinking ceremonial interrupted by state rangers looking for out-of-season squirrels		O:23
Utah	Ute	eagle feathers from Pocatello damaged in shipping	FWS revising procedures	O:37
Utah	Ute	foresees trouble taking eagle feathers across state lines		O:38
Oklahoma	Muskogee	prescribing herbal medicine illegal		O:86
Oklahoma	Muskogee	getting eagle feathers, eagle parts	FWS revising procedures	O:96
Oklahoma	Muskogee	religious leader stopped in courtroom for carrying sacred pipe		O:96

SACRED OBJECTS (2)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Oklahoma	Muskogee	commercial trafficking in medicinal herbs		O:136
Oklahoma	Cheyenne	commercial trafficking in plants and animals		O:150
Oklahoma	Cheyenne	sport hunting depletes animals for ceremonial use		O:150
New Mexico	Isleta Pueblo	need for feathers and bird parts		R:6
Great Smoky National Park	Eastern Cherokee	lack of access to ramp (lily) gathering for ceremonial festival	agreement reached with NPS	S
Southwest	Navajo	lack of access to feathers		S
Oklahoma	Kiowa	lack of access to feathers		S
Alaska	Alaska Native	subsistence laws fail to protect religious usage		S
Minnesota	Chippewa	Pocatello depository has feathers but not parts for sun dance: head, talons, wings, bones for whistles	FWS revising procedures; other parts now available	M:27
Madison, WI		red tape to get eagle parts; local agent ignorant of procedure	FWS revising procedures	M:28
Minnesota		xrays at airport destroy medicine bundles		M:36

SACRED OBJECTS (3)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
New Mexico	Mescalero Apache	lack of access to yucca, protected as state flower		S:10
New Mexico	Mescalero Apache	state highway department stops mesquite bean gathering		S:11
New Mexico	Taos Pueblo	lack of access to eagle feathers, other feathers	FWS revising procedures	S:18
New Mexico	Santa Clara Pueblo	environmental laws limit access to feather gathering		S:24
New Mexico	Santa Clara Pueblo	commercialization of ceremonial material		S:26
New Mexico	San Felipe Pueblo	trouble when bringing animals across state lines		S:30
New Mexico	Santo Domingo Pueblo	lack of access to feathers		S:59
Arizona	Hopi	lack of access to eagle feathers	FWS revising procedures	S:62
Arizona	Hopi	eagle feather dispute with Navajo		S:65,78
Arizona	Hopi	access to eagle feathers for prayer sticks	FWS revising procedures	S:81
Arizona	Hopi	whites on reservation steal prayer feathers, disrupt shrines		S:78
Arizona	Hopi	lack of access to eagle feathers	FWS revising procedures	S:81

SACRED OBJECTS (4)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Arizona	Hopi	people living too close to eagle nesting areas, endangering eagles		S:84
New Mexico	Jicarilla Apache	lack of access to eagle feathers, eagle parts	FWS revising procedures	S:103
New Mexico	Jicarilla Apache	lack of access to heron, duck feathers		S:104
Colorado	Ute Mountain Ute	lack of access to eagle feathers	FWS revising procedures	S:105
New Mexico	Acoma Pueblo	lack of access to feathers		S:127
New Mexico	Zuni	lack of access to eagle feathers	FWS revising procedures	S:213
New Mexico	Zuni	problem of trying to quantify objects of use		S:213
New Mexico	Zuni	lack of access to feathers		S:227,229
New Mexico	Zuni	lack of access to twigs		S:227
New Mexico	Zuni	delays in getting feathers	FWS revising procedures	S:229
Montana		distribution of eagle parts	FWS revising procedures	G:34
Montana		pollution damages medicinal plants		G:44
Montana		xrays at airports damage medicine bundles		G:45

SACRED OBJECTS (5)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Montana	Crow	confiscated evergreens at airport boarding, Denver		G:104
Montana	Crow	commercial sales compete with gathering medicinal plants		G:120
Montana	Crow	culling bear population has no provisions for priority Indian use (FWS/NPS)		G:219
Montana	Crow	selling bearskins and meat at auction and not Indian priority use		G:219
Montana	Nez Perce	commercial sale of herbs and plants		G:348
Montana	Nez Perce	lack of access to eagle feathers	FWS revising procedure	G:351
Montana	Peigan	lack of access to eagle feathers	FWS revising procedure	G:360
Montana	Crow	lack of access to eagle, other feathers, eagle parts	FWS revising procedure	G:366
Montana	Crow	need eagle feathers and parts for ceremonial use	FWS revising procedures	G:368 G:384
Montana	Peigan	confiscating eagle feathers		G:372
Montana	Crow	red tape at Pocatello depository	FWS revising procedures	G:384
Minnesota	Chippewa Winnebago	state has cumbersome licensing system to use Pocatello depository		G:389

SACRED OBJECTS (6)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Minnesota	Chippewa Winnebago	states uncooperative in feather distribution		G:391
Southwest	Navajo	whites illegally in possession of eagle feathers		G:392
Oklahoma	Pawnee	disposal of animal carcasses and parts fails to consider Native needs (FWS/NPS)		D:21
Florida	Miccosukee	lack of access to eagle feathers	FWS revising procedure	D:57
Washington	Colville	not enough water for salmon to survive dams		C:110
Hawaii	Native Hawaiian	outline of issues of use of and access to plants and animals and natural products		D:92
NARF/AILC Religious Freedom Project		recommendations on right to use natural products		D:96
Rhode Island	Narragansett	lack of access to plants, eagle feathers, seals		D:NFP
Nevada	Paiute	lack of access to deer parts, paints		D:NFP
Wyoming	Arapaho	lack of access to tipi poles, paints		D:NFP

SACRED OBJECTS (7)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Oregon	Klamath	depletion of salmon jeopardizes First Salmon ceremony		D:NFP
Maine	Penobscot	lack of access to ceremonial foods; state spraying endangers fiddleheads		D:NFP
California	Pomo	lack of access to feathers and abalone shells		D:NFP
Florida	Seminole	lack of access to water, turkey and other birds of the Everglades		D:NFP
Oklahoma	Kiowa	lack of access to buffalo for sun dance		D:NFP
Washington	Nisqually	introduction of fall salmon by state depleted spring salmon runs, used for spring ceremonies		D:109
Washington	Nisqually	Canada and Alaska fishers intercept local fish stocks		D:109
Washington	Nisqually	not enough salmon and steelhead for ceremonial purposes		D:109
Washington	Nisqually	chum salmon dwindling, important fall chum used for winter ceremonies, weddings, funerals		D:109
Washington	Nisqually	FWS distribution of hatchery chum to tribes for ceremonial use halted		D:109
Washington	Nisqually	threat of competition from sport fishing for steelhead		D:109

EXAMPLES OF SPECIFIC PROBLEMS RELATING TO BORDER CROSSINGS

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Alaska	Eskimo	lack of access to sites across border		A:18,54
Kaktovik, Alaska	Eskimo	paperwork hinders passage across border		A:121
Alaska	Eskimo	must detour 400 miles to clear customs		A:121
US-Mexico border	Kiowa	crossing with peyote		M:12,21 M:32,63
US-Mexico border		finding official with authority to clear peyote at customs port		M:117
US borders	Muskogee, Chippewa	border officials rifling medicine bundles		O:98 M:12
US-Canada border	Native American Church	bringing peyote into Canada		S
US-Mexico border	Kickapoo	crossing with peyote		S
Detroit, Michigan	Ottawa	resent searches and seizures		M:11
US-Canada border	Chippewa	Jay Treaty rights		M:46 G:21
US-Canada border	Chippewa	bringing animal parts across border		M:46
US-Canada border	Okanogan-Colville	paying duty on ceremonial gifts, blankets		C:8

BORDERS (2)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
US-Mexico border	Mescalero Apache	border crossing for medicine		G:11
US-Mexico border	Yaqui	crossing with ceremonial masks	tribal cooperation with Customs Service in preparing familiarization with ceremonial objects	G:25
US-Canada border		opening medicine bundles		G:21,33
US borders		horses, groceries, sweet grass at customs ports		G:34
US borders		hours of operations of customs ports		G:37
US borders		border officials ignorant of Native languages		G:39
US borders		recruiting Native officers	ongoing program with Papago	G:40
US borders		importing moose meat, fish nets		G:41
US-Mexico border	Yaqui	importing mesquite charcoal		G:52
US-Canada border	Iroquois	crossing with implements		G:73
US-Canada border	Iroquois, Nez Perce, Crow, Colville	port of entry hours of operation		G:75,83 G:131,198 G:305
US-Canada border	Navajo, Chippewa-Cree	bringing peyote into Canada; may be emergency and not time to obtain permit		G:76,87 G:114,399

BORDERS (3)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
US-Canada border	Peigan, Crow, Blackfeet	examining and desecrating medicine bundles		G:102,138 G:304
US-Canada border	Peigan	cross-border trading in medicinal plants		G:101
US-Canada border	Salish-Kootenai Blood/Blackfeet	crossing border with plant material		G:107,135 G:148,336
US borders	Crow	confiscating peyote, other objects		G:119
US-Canada border	Colville	fishing rights under Proclamation of 1865		G:125
US-Canada border	Colville, Blood, Crow	paying duty on giveaway items		G:126,134 G:305
US-Canada border	Colville, Blackfeet	cumbersome veterinary process for bringing horses across border		G:126,290
US-Canada border	Colville	crossing with beaver, otter pelts		G:127,130
US-Canada border	Colville	crossing with kinnikinnik (tobacco)		G:131
US-Canada border	Blackfeet	lack of access across border		G:144
US-Canada border	Blood	imputation of 'high-risk' category for Indians by Canadian customs		G:170
US-Canada border	Colville, Blood, Crow	discriminatory searches by Canada customs, RCMP		G:177,184 G:187,196
US-Canada border	Blackfeet, Crow	goods for giveaway ceremonies not duty-free		G:185,308

BORDERS (4)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
US-Canada border	Crow	access across border		G:187
US-Canada border	Crow	interrogations about give-away ceremonies		G:187
US-Canada border	Crow	impounding goods, jailings		G:188
US borders	Navajo, Blackfeet	crossing with eagle feathers		G:189,357
Peigan, MT port of entry	Crow	people died of exposure because port was closed on weekends		G:195
US-Canada border	Crow	getting turned away at border		G:196
US-Canada border	Crow	access to ceremonies across border		G:197
US-Canada border	Crow	ceremonial objects not to be viewed by officers		G:197
US-Canada border	Crow	Jay Treaty rights		G:197
US borders	Navajo, Blackfeet	Indian agents in Indian country		G:273,300
Carway and Del Bonita ports of entry, Montana	Blackfeet	unable to cross with horses at these ports		G:293
US-Canada border	Blood	unreasonable procedures		G:297

BORDERS (5)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
US-Canada border	Rocky Boy's (Chippewa-Cree)	unable to cross without $30 even when just going to visit relatives		G:326
US-Canada border	Iroquois	Jay Treaty rights		G:329
US borders	Blackfeet	duty-free and regulation-free import of religious materials		G:335
US borders	Blackfeet	duty-free and regulation-free import of indigenous plants, animals, minerals and their products		G:336
US borders	Blackfeet	duty-free and regulation-free import of Native crafts, of tribal manufactures, of all Jay Treaty articles		G:336
US-Canada border	Nez Perce	inspections, harassment		G:345
US-Canada border	Nez Perce	turning away Indians at border		G:348
US-Canada border	Nez Perce	bringing ceremonial material across		G:351
US-Canada border	Nez Perce	duty on moose hide prohibitive		G:354
US-Canada border	Colville	crossing with roots, with salmon		G:380
US-Canada border	Crow, Blood	idea of border is offensive		G:198,307 G:310
US-Canada border	Crow, Blackfeet	no coordination of US and Canadian policy on cross-border confederacies		G:202,206

BORDERS (6)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
US-Canada border	Crow	no consultation with Indians on declarations		G:261

EXAMPLES OF SPECIFIC PROBLEMS RELATING TO MUSEUMS

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Alaska	Alaska Native	museums won't return burial objects		A:55
Oklahoma	Cherokee	remains and artifacts in museums		O:117
Nevada		commercial exploitation of artifacts		R:55
Washington	Colville	artifacts in museums		C:48
Montana	Peigan	ceremonial objects in museums		G:242
Montana	Peigan	museums not all under federal regulation		G:242
Montana	Blackfeet	international market for cultural artifacts encourages theft of Indian objects		G:339
Montana	Blackfeet	artifacts in private ownership leaving country		G:340
Northwest	Nez Perce	art market for artifacts		G:346
Toronto, Canada	Nez Perce	tribal artifacts in art gallery		G:348
Montana	Crow	trafficking in artifacts by museums, hobbyists, taxidermists		G:358
Arizona	Zuni	Smithsonian possession of illegally taken war god, Pueblo wants back	ongoing discussion between Zuni and Smithsonian	Z:80
Arizona	Hopi	tribe wants custodianship of potshards, objects		Z:80
Arizona	Navajo	museums seizing artifacts		Z:140

MUSEUMS (2)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Arizona	Navajo	lack of access to museum personnel to petition for return of objects		Z:140
New Mexico	Zuni	tribe wants use of museums' collections; joint-use agreements desired		Z:179
Smithsonian Institution, DC	Zuni	museum doesn't return Bear Clan religious icons		Z:224
Palm Springs Museum, Calif.	Mojave	sacred medicine bundle broken open and scattered through collection		D
Denver Art Museum, Colo.	Zia Pueblo	ceremonial object in museum collection		D
Denver Art Museum, Colo.	Zuni	war god stolen from Zuni, in possession of museum	negotiated return, 1979	D
Smithsonian Institution, DC	Zia Pueblo	stolen Snake Society pots on display		D
Smithsonian Institution	Mescalero Apache	skull of Chief Mangus Colorado in collection	Smithsonian says this is not in its possession - it has skull of Captain Jack, Mohave	D
New York	Iroquois	state museum won't return wampum belts	state legislation pending	D
Bishop Museum, Honolulu, HA	Native Hawaiian	tikis, kohula fishing gods in collection		D
Stockbridge Museum, Mass.	Stockbridge-Munsee Band	1745 tribal bible wanted for tribal museum		D

MUSEUMS (3)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Gnadhutten, Ohio	Stockbridge-Munsee Band	skeleton on display		D
Peabody Museum, Harvard Univ.	Eastern tribes	extensive collection of ceremonial objects		D
Pipestone Natl Monument	Sioux	sacred pipes improperly displayed		D
Santa Fe, NM	Zia Pueblo	museum has one of 16 remaining ceremonial war shields		D
Heye Foundation, New York City	Crow	museum holding medicine bundles, other sacred objects		D
State Museum, Bismarck, ND	Sioux	museum has pipes, medicine bags, other artifacts		D
Oklahoma Historical Society	Creek	medicine bags improperly displayed		D
Sioux Museum, Rapid City, SD	Sioux	pipes, medicine bags improperly displayed		D
Dakotah Prairie Museum, SD	Sioux	museum displays pipes not to be viewed		D
Prayer Rock Museum, Britton, SD	Sioux	museum has prayer rock and pipes		D
Hawaii	Native Hawaiian	Hawaiian issues on museums		D:92
Washington	Colville	artifacts should be in tribal control		C:136
Washington	Colville	no tribal museum exists to house artifacts to be received into tribal control		C:147

EXAMPLES OF SPECIFIC PROBLEMS RELATING TO CEREMONIES

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Alaska	Athabascan	early federally-sanctioned missionaries endangered traditional religion, ceremonies		A:53
Alaska	Athabascan	BLM easements on Native property disturb privacy of worship		A:57
Alaska	Tlingit	children taken from parents by boarding school officials, results in loss of culture, religion		A:84
Alaska	Eskimo	Native culture suppressed by secular and religious institutions; beliefs valid even though uncodified		A:88
Oklahoma	Kiowa	blood quantum controversy		N:14
Oklahoma, Texas	Native American Church	getting peyote for ceremonies		N:21
Texas	Native American Church	lax enforcement of peyote laws, peyote not cleaned correctly		N:24
Oklahoma	Muskogee	stomp dances suppressed by BIA/ elected government as pagan		O:26-
Oklahoma	Muskogee	non-traditional tribal government system harmful to traditional Muskogee people and government system		O:69
Oklahoma	Muskogee	clan identification replaced by blood quantum		O:74

CEREMONIES (2)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
McAlester prison, Okla.	Muskogee	access to ceremonial tools denied		O:80
Oklahoma	Muskogee	students', workers' absence for ceremonies	BIA developing policy in keeping with OPM regulations	O:81
Oklahoma	Muskogee	sweat lodges for inmates		O:97
Oklahoman	Muskogee	swearing oaths on Bible with raised hand offensive		O:99
Oklahoma City	Wichita-Caddo	city fire code forbids sweat lodge		O:124
Oklahoma	Wichita-Caddo	access of inmates to religious leaders		O:126
Oklahoma	Muskogee	whites filming ceremonies		O:134
Oklahoma	Muskogee	non-ceremonial use of stickball game		O:135
Oklahoma	Cheyenne	BIA doesn't recognize traditional leaders, who continue the tribe, but listens to political leaders, who don't uphold traditions		O:152
Reno, Nevada	Reno-Sparks	city fire code classes sweat lodge as outdoor barbecue, must get single use permit		R:85
Hawaii	Native Hawaiian	military insensitive to Native religion		H:24

CEREMONIES (3)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Hawaii	Native Hawaiian	prejudice against Native religion		H:35
Hawaii	Native Hawaiian	no protection of ceremonies		H:86
Hawaii	Native Hawaiian	Native religion regarded as dead		H:122
South Dakota	Sioux	recognition of sacred pipe and hoop in schools, prisons, hospitals		S
South Dakota	Sioux	inmate access to sweat lodges		S
	Crow	peyote abuse by whites		S
South Dakota	Sioux	leave from work for religious observances		S
South Dakota	Sioux	objection to undertakers, embalming		S
South Dakota	Sioux	no Indian cultural programs in schools		S
Englewood FCI	Sioux	inmate denied bundle and pipe		S
FCI Lompoc	Sioux	sweat lodge at Lompoc	settled in litigation (Bear Ribs case)	S
South Dakota	Sioux	lack of bicultural education		S
Leavenworth USP		inmate denied peyote ceremony of Native American Church	request granted 1979	S
Marion USP		inmates denied access to objects, religious leaders	administrative appeal pending	S

CEREMONIES (4)

LOCATION/TRIBE/GROUP	PROBLEMS	STATUS	REF
McNeil Island USP	inmate denied objects	request granted 1979	S
USP Sandstone	medicine man searched, medicine bundle opened, inmates denied sweat lodge	in litigation	S
FCI Englewood	inmates denied sweat lodge, pipe, access to leaders	sweat lodge granted 1979, other relief pending	S
FCI Lompoc	denied marriage ceremony	request pending	S
Arizona State Prison	forcible haircut, denied sweat lodge, religious discrimination		S
Iowa State Prison	denied sweat lodge, access to leaders, objects	objects granted after litigation	S
Kansas State Prison	denied sweat lodge		S
Minnesota State Reformatory	denied sweat lodge, ceremonies, natural products		S
Minnesota State Prison	denied sweat lodge, pipe, medicine bags		S
NPCC-Women, Nebraska	denied access to religion		S
NPCC Nebraska	denied access to Native American Church ceremony		S
New Mexico State Prison	hair regulations		S

CEREMONIES (5)

LOCATION/TRIBE/GROUP	PROBLEMS	STATUS	REF
North Dakota State Prison	denied sweat lodge	request pending	S
Oregon State Prison	denied access to religious objects, natural products		S
Oregon State Correctional Institution	denied braided hair when long hair approved		S
PCC Virginia	hair regulations		S
MP Massachusetts	denied sweat lodge, pipe		S D:100
Oklahoma State Prison, McAlester	denied access to religious leaders, objects, natural products, ceremonies	settled by litigation	S D:99
South Dakota	failure to investigate civil rights violations in federally-funded state prisons		S
South Dakota Sioux	searches of medicine men and medicine bundles	ID card program in California	S
South Dakota Sioux	traditional culture not used as rehabilitation technique	LEAA program in Swiftbird	S
Point Conception, California Chumash	LNG terminal development on ceremonial land		S
South Dakota Sioux	BIA ex-offender program under-funded, understaffed, inadequate		S
South Dakota Sioux	neglect of women inmates' rights		S

CEREMONIES (6)

LOCATION/TRIBE/GROUP	PROBLEMS	STATUS	REF
Native American Church	denial of enlistment in military services, prosecution and confiscation of peyote		S
Native American Church	states uncooperative in implementing regulation on peyote use; federal government fails to monitor state violations		S
Native American Church	poor permit controls, exploitation of peyote by non-Natives		S
Native American Church	can expenses of peyote religion practitioners be deducted from taxes		S
Native American Church	freedom of religion in Indian boarding schools, rights of Church		S
South Dakota Sioux	no teaching Sioux language, arts, Iktomi stories		S
Wisconsin	inmate denied pipe ceremony		M:14
Wisconsin	medicine bundles searched; access to inmates		M:14
Sioux Falls, SD State Prison	anyone trying to practice traditional religion branded troublemaker, arbitrary transfers of Natives		M:13

CEREMONIES (7)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Leech Lake, Minnesota	Chippewa	arrests in connection with religious practice; when arrested it is hard to justify activity when religion prohibits discussion of rites		M:45
Minnesota		attitudes of prison wardens to ceremonies: fears of drugs, violence		M:109
Minnesota State Prison, Stillwater		warden refused request for Native American Church chaplaincy		M:112
Minnesota	Winnebago	strip searches of medicine men; tampering with pipe		M:118
Washington		inmate access to ceremonies		C:21
USP McNeil Island		denied sweat lodge		C:21
USP McNeil Island		chaplain denied use of pipe, sage, feathers, cedar, buffalo skull, sweet grass		C:21
Chehalis Indian School	Sioux	BIA superintendent denied sweat lodge		C:29
Washington		IHS admissions question on religious preference fails to provide for syncretist or dual affiliation		C:53
Washington		IHS denial of such traditinal birth rites as saving umbilical cord		C:54

CEREMONIES (8)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
FCI McNeil		denied taking ceremonial objects into prison		C:59
Washington	Colville	peyote abuse in boarding schools by non-peyote religion practitioners		C:71
Montana	Blackfeet	no cultural, tribal history or language education in BIA schools		G:223
Montana	Nez Perce	missionary suppression of traditional religion		G:353
Montana	Blackfeet	suppression of languages in BIA schools		G:356
New Mexico	Santa Clara Pueblo	fear of having to reveal secrets in order to comply with Act		S:27 S:150
Arizona, New Mexico	Hopi	other tribal police stopped religious pilgrimage		S:84
Arizona	Hopi	need for privacy of ceremonies and sites		S:86
Arizona	Hopi	tourists disrupt ceremonies; commercial exploitation		S:96
Southwest	Navajo	missionary interference with traditional practice		S:138
Colorado	Ute Mountain Ute	IHS fails to recognize traditional medicine		S:154

CEREMONIES (9)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
New Mexico	Zuni	legal system fails to recognize spiritual concerns		Z:172
New Mexico	Zuni	prayers for all small birds and religious rights		Z:215
New Mexico	Zuni	outdoor lighting interferes with fasting period		Z:226
New Mexico	Zuni	laws protect what is unknown to them		Z:232
New Mexico	AILSA	religious world-view may prevent recourse to secular institutions for redress of grievances		D:1
New Mexico	AILSA	tribal courts unable to protect religious freedom		D:1
San Felipe Pueblo		BIA staff barred from Pueblo during ceremonies have no administrative leave	BIA developing policy	D:2
San Felipe Pueblo		BIA official appointed to ceremonial post as Pueblo Governor's aide lacks leave of absence procedures		D:2
Oklahoma		illegal peyote use		D:4
Oklahoma	Muskogee	suppression of stomp dance, ceremonial fires, other ceremonies by BIA/elected official		D:5

CEREMONIES (10)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Oklahoma	Muskogee	decline of tribal towns		D:6
Oklahoma		suit to amend religious policy of Oklahoma state prisons, Little Raven v. Hess, on access to religious eladers and ceremonial objects	Oklahoma Dept of Corrections issued policy memorandum granting access	D:10,53
Alaska	Eskimo	religious ceremonial practices		D:17
Washington	Colville	historical struggle of Indian Shaker Church		D:23 D:30
Washington	Colville	use of peyote rejected; use of Shaker songs and instruments by non-Shakers		D:26 C:116,117
Oregon		peyote abuse		D:27
Washington		to insure protection of Native American Church		D:29
USP Steilacoom, Washington		inmate denied access to ceremonial objects		D:32
Washington State prisons		inmates denied access to traditional religions		D:33
Oregon State prisons	Sioux	denied sweat lodges		D:36
Fort Carson, Colorado		peyote possession by enlisted man		D:54

CEREMONIES (11)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Weld County, Colorado		student's long hair denied by school board	overturned on religious grounds in Pokrywka v. Weld County School Dist.	D:55
Washington	Colville	need for Indian language classes		C:104
Washington	Colville	ceremony at Washington State Univ. broken up by local police		C:131
Utah State Prison		hair standards violate inmate's ceremonial practices		D:67
South Dakota	Sioux	ceremonies have role in rehabilitation of ex-offenders		D:95
NARF/AILC Religious Freedom Project		US Parole Commission should consider parole treatment of Native inmates; certain parole criteria discriminate against Native American Church members		D:98
		explanation of why OIR rarely takes religious freedom cases		D:101
Tuscarora, Rosebud Sioux, others		explains religious practice and beliefs regarding traditional		D:102
		Native hair styles and customs explains why it is unnecessary to require short hair of inmates		D:103
		Native inmate hair issue, Crowe v. Erickson		D:104

CEREMONIES (12)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Alaska	Eskimo	consultations have no interpreters		A:62
Alaska	Tlingit	need for more bilingual school facilities and programs; schools not responsive to Native cultural needs		A:79,80
Fort Lewis, Washington	Nisqually	religious smokehouses no longer permitted at Muck Creek area		D:109
Fort Lewis, Washington	Nisqually	sweat ceremonies interrupted by artillery shelling		D:109
Alaska	Tlingit	girl taken from Native home, placed in non-Native foster home		A:82
Alaska	Tlingit	Indian Child Welfare Act exempts Mormons from foster home provisions		A:105
Alaska	Tlingit	Alaska continues to remove Native children from North Slope to non-Native foster homes		A:121
Fort Hall, Idaho	Shoshone-Bannock	traditional dances, ceremonies and religious activities should be protected under state and federal laws as is Native American Church (e.g., sun dance, warm dance, etc.)		D:RFP
Arizona, Southwest Oklahoma, South Dakota	Hopi, Navajo, Cheyenne, Sioux	conflict between traditional and non-traditional forms of government on reservations		Z:110 S N/O

CEREMONIES (13)

LOCATION/TRIBE/GROUP		PROBLEMS	STATUS	REF
Southwest	Navajo	lack of bilingualism in federal agencies limits their ability to serve Indians		S:136
California		want consultations in California		D/H/S
Northeast		want consultations in the Northeast		S/G
Navajo		want consultations at Navajo		S/G
Montana	Crow	federal directives not implemented locally		M:127
New Mexico	19 Pueblos	Pueblo leaders find no change in federal land-managing agencies' practices since passage of P.L. 95-341		D:110
New Mexico	19 Pueblos	need for unrestricted hunting and fishing for religious ceremonial purposes		D:110
New York	Iroquois	need return of wampum belts and other objects necessary to certain ceremonial and traditional governmental functions		D:RFP

LIST AND SUMMARY OF WRITTEN SUBMISSIONS FOR THE RECORD

	DOCUMENT	CONTENTS
1.	Letter, American Indian Law Students Association, July 9, 1979, [9 pp.]	cultural resource classification not consonant with sacred site; Park Service recognizes archeological, not sacred significance of sites; competition for land use; examples of sites: San Francisco Peaks, Siskiyous, Hawaiian sites, Mt. Taylor, Como Hot Springs, Cherokee burial grounds, Rainbow Bridge, Taos sites; tribal governments may be unsympathetic to traditional values; religious world-view may prevent traditional people from petitioning for redress because of impurity of secular institutions; tribal courts not competent to protect religious freedom, appeal from tribal court impossible.
2.	Letter, Valentino Cordova, Superintendent, BIA School at San Felipe Pueblo, to Task Force, June 28, 1979	staff of BIA school (and all non-Pueblos), barred from San Felipe Pueblo and other Pueblos during ceremonies which begin without public announcement, have no administrative leave from federal employment; BIA employees appointed to Pueblo Governor's staff, an unavoidable obligation, should have IPA arrangements with BIA
3.	White House Memorandum, May 3, 1979, letter, Thomas Bancyacya to President Carter, April 3, 1979, and mailgram, Hopi elders to President Carter, May 1, 1979	protest land claim settlement; community center at Botevilla, AZ on sacred site
4.	Statement, Thomas J. Blumer, July 16, 1979	importance of pottery in the traditions of the Catawba Tribe of South Carolina; summary of research on the story of Catawba pottery from pre-Columbian times to the present; clays are traditionally obtained from only one section of the Catawba River
5.	Letter, on Creek Nation letterhead, to Madison Bucktrot, no date (unofficial, unauthorized correspondence)	to illustrate suppression of traditional religion: forbids stomp dance, ceremonial fires, "jam sessions," "all night shindigs"
6.	Agenda, Kings and Warriors Meeting, Weogufkee, Okla., June 23, 1979	discussion of tribal towns
7.	Paper, Legal Action Support Project, Bureau of Social Science Research, Inc., Byron Swift and Gary Bickel, "Comparative Parole Treatment of American Indian and non-Indian inmates of US Federal Prisons, FY 1973, 1974" 24 pp.	discrimination against Indians reflected in parole statistics
8.	Resolution and cover letter, Kickapoo Tribe of Oklahoma, March 3, 1979	request to Okla. Dept. of Wildlife Supervision to hunt deer out of season
9.	Letter, to Attorney General State of Oklahoma, May 17, 1979	request for deer for Green Corn Dance and Spring Feast ceremonies
10.	Cover letter, Native American Rights Fund; Lawsuit Stipulation, and Order on Dismissal, Alan Little Raven v. Norman Hess, CV 77-167C, US District Court, Eastern District, Oklahoma; memorandum, Oklahoma Dept of Corrections OP090301 Rev 4Aug78.	suit to amend practice of religion policy of Oklahoma prisons yields access to spiritual leaders (specif. Native American) and access to objects (specif. feathers, fans, beads, gourds, drums) and to literature
11.	Formal submission to the Task Force, Edward Red Hat, Arrow Keeper, Tsistsistas (Cheyenne), 4 pp.	on hunting and gathering requirements pertinent to the Tsistsistas ceremonies; request for more stringent laws for sport hunting and fishing; access to Bear Butte, SD, its protection from motorcycles, tourism, etc.; proposal to create a Board of Traditional Tribal Members; access to named sites

	DOCUMENT	CONTENTS
12.	Alaska OCS Socio-economic Studies Program, Bureau of Land Management, "Beaufort Sea Region Sociocultural Systems" (Technical Report 1, Contract AA550-CT6-61)	acknowledges (1) the strong religious and cultural role whaling plays in Eskimo villages; (2) subsistance comprises 60-70% Eskimo food, and unemployment in cash economy terms is very high; (3) subsistence and culture are inseparable; (4) describes hunting and food distribution.
13.	Special Report to the International Whaling Commission, Commerce Dept, NOAA, "Bowhead Whales" pp 58-62	acknowledges importance of bowhead whale to Eskimo community; cultural dependence noted, though hard to quantify by non-Natives, concludes that there are no alternative food sources.
14.	William A Oquilluk, People of Kauwerak: Legends of the Northern Eskimo (AMU Press 1973)	collection of stories, legends and ceremonies by an Alaska Native.
15.	Transcripts, Alaska Eskimo Whaling Commission, 11 Sep 77	Inupiat testimony on proposed IWC ban on bowhead hunting, in translation, on on Inupiat needs, culture, subsistence, religion and way of life.
16.	Statement of Raymond Neakok, Sr., Eskimo, in translation	problems caused by US; statement of environment/animal relationships
17.	Dorothy Jean Ray, "Eskimo Masks, Art & Ceremony" pp 47-49	religious purposes of dancing (1) to honor spirits of animals, (2) to insure continuing food supply; uses of masks to communicate with animal spirits; ceremonies to fuse spiritual and mundane worlds, to solidify inter-tribal relations.
18.	Robert F. Spencer, North Alaskan Eskimo: A Study in Ecology and Society (Dover, NY)	Eskimo whaling (charms, songs, taking and greeting ceremonies, closing the season), caribou hunt (shamans used to call caribou, taboos observed, charms and songs, thanking the caribou, basic concepts of ritual and religion are magnified in hunting).

	DOCUMENT	CONTENTS
19.	North Slope Borough Planning Commission "Nuiqsut Village: A Cultural Plan", Feb 79	comprehensive background on Inupiat perspectives and survival
20.	Letter, Frederick Torrisi, Attorney, 9 Jul 79	Bureau of Land Management denies hundreds of Native land allotment applications because "the ancient value of sharing land and resources conflicts with Western ideas about the ownership of land."
21.	Letter, Walter Echo Hawk, Native American Rights Fund	Fish & Wildlife Service and Alaska fish and game policies regarding disposal of animal carcasses and parts fail to consider Native religious needs
22.	Letter, Walter Echo-Hawk, NARF, to Task Force, June 15, 1979; Consent Judgment and Decree, Bear Ribs et al. v. Taylor et al., 77-3985 RJK(G), US District Court, Central District, California	successful attempt to install sweat lodge in Lompoc FCI
23.	Articles of Incorporation and Bylaws, Indian Shaker Church of Washington; Credentials of Authority, Indian Shaker Church to Pearl Charley and Mary Ann Charley; Minutes of meeting, Indian Shaker Church, Mallott, WA, October 19, 1974; Statement of Pearl Charley; Statement of Marianne Charley; Statement of Margaret A Charley; Statement of T.B. Charley	"hard time getting help to build or remodel" churches; "we were confined to jail cells;" people harrass the church because of worship through the Holy Spirit; no church building on Colville Reservation
24.	Statement of Anita Cheer	abuse of hallucinogenic plant on Colville Reservation contrary to our teaching

	DOCUMENT	CONTENTS
25.	Resolution 1978-347, Colville Business Council; Letter, District Engineer, US Army Corps of Engineers, Seattle District to Chairman, Colville Business Council, May 1, 1979	agreement on disposition of artifacts associated with Chief Joseph Dam Project
26.	Statement of Nelson Iukes, Director, Nespelem Community Center	objects to peyote in religious ceremonies; privacy of Indian Shaker Church denied as non-Shakers use Shaker songs and instruments
27.	Letter, Charlie White Dirt, Northern Cheyenne, January 1, 1979	requesting federal assistance in protecting Bear Butte, sacred Cheyenne site (12/18/78 Resolution of Northern Cheyenne Tribal Council)
28.	Article, East Oregonian, May 19, 1979, "State Police Seize 31 Pounds of Peyote"	on peyote abuse
29.	Letter, George M. Nanamkin to Task Force, June 15, 1979; petitions in support of Native American Church; letter, Candace E. Rolle-Hart to Assistant Secretary - Indian Affairs, June 13, 1979; Statement of Diana Toulou	to insure protection of Native American Church ceremonies
30.	Statement of William Charley, Sr.	testimony of miraculous healing of Indian Shakers
31.	Correspondence pertaining to attempts to institute a sweat lodge at Chemawa Indian School	sweat lodge not installed at Chemawa Indian School
32.	Letter, Native American Rights Fund to Chaplain, US Penitentiary, Steilacoom, WA, March 16, 1979	prison denied request of H.J. Luna to bring religious items into prison

	DOCUMENT	CONTENTS
33.	Letter, Harold Belmont, Seattle Indian Alcoholism Program, to Washington Department of Alcohol Abuse, June 27, 1979	inmates denied access to and practice of traditional religions in Washington State prison system
34.	Statement, T.B. Charley	Colville sacred sites
35.	Statement, Eddie Palmanteer, Sr.	ceremonial fishing grounds
36.	Cover letter, Frank Alby to Task Force, June 27, 1979; letters to Oregon officials	denial of sweat lodges in Oregon prison system
37.	Articles, Klamath Falls (Ore.) Herald and News, February 13, 1978	looting of sites, interview with state archeologist; Indian views on Oregon 1977 burial site protection laws
38.	Article, Salem (Ore.) Capital Journal, February 13, 1978	development on Link River Native cemetery site
39.	Article, Oregonian, August 28, 1979, AP dateline	burial sites disturbed by Corps of Engineers at Big Bend Dam, SD
40.	Article, Oregon Journal, October 26, 1978	burial site at industrial park
41.	Article and letter, Capital Journal, October 29, 1978, AP	disruption of burial and no reinterment
42.	Article, Oregon Statesman, March 15, 1979; Article, "Journal," March 16, 1979, Article, Capital Journal, May 16, 1979	on Oregon burial site protection law
43.	Bill, Oregon Senate, SB 631, 1979 and House amendments	Indian burial site protection legislation

	DOCUMENT	CONTENTS
44.	Cover letter, Frank Alby to Task Force, June 27, 1979	
45.	Minutes of Meeting, Commission on Indian Services, State of Oregon, "Protecting Indian Burials" and appendices, February 8, 1979	(excerpted) An archeologist for the State Historic Preservation Office, administering the Indian burial site protection law, said that office had no enforcement powers and must rely on police who may not be aware of law. Prosecutor for Yakima Nation said the Yakimas were unwilling to participate as consultants in determining disposition of sites because sites should be treated only under general grave robbing statutes. The Director of the Klamath County Museum said tourist promotion in that area emphasised arrowhead hunting and vandalism. A member of the Cow Creek Umpqua Band of Indians said a pot hunter told him he was not deterred by law with minimal penalties and indifferent enforcement. Also present were representatives of Fish & Wildlife Service, Bonneville Power Authority, Forest Service.
46.	Appendices: ORS 97.740, ORS 97.745, ORS 97.750, ORS 97.990, Article, American Antiquity, 39:1974:1, "American Indians and American Archaeology;" unidentified journal, Thomas F. King, "Archaeological Law and the American Indian;" 1977 Oregon Laws of Interest to Indian Tribes, etc., especially HB 2626; Background memorandum, Commission on Indian Services, on legislation to protect Indian burials, February 3, 1977	Oregon Indian burial site protection statutes

	DOCUMENT	CONTENTS
47.	Letters, Joyce Griffen to A/S-IA and to Director, Forest Service, both June 14, 1979	development of ski area on San Francisco Peaks; uranium mining at Mt. Taylor; lumbering and mining of cinders in Coconino National Forest
48.	Letters, Mr & Mrs Terry Huey, to Task Force and BIA, April and June, 1979; Article, Alexandria (Indiana) Times Tribune, no date, "Before Time, the Land Waited - for Man;" Regional Facilities Plan, City of Alexandria (IN) Town of Orestes, April 1979, Maps of Monroe County, Indiana, etc.	landfill in Alexandria, Indiana threatens burial sites, town site
49.	Letter, John Garcia, Indian Council of California to Sen. Hayakawa, October 24, 1979, transmittal to BIA and response, Director of Trust Responsibilities	expansion of Lick Observatory (Univ of California at Santa Clara) on Junipero Serra Peak, a sacred site
50.	Letter, Chief Alden Windsong Blake to Rep. Margaret Heckler, April 26, 1979, and transmittals	government promised Chief Turkey Tayac, Piscataway, burial rights at Piscataway National Capital Park, not honored
51.	Letter, G.K. Sapier to the President, May 24, 1979, and article, Lancaster (Penna.) Intelligencer, May 3, 1979, "Archaeologists Await Dig Approval Today"	archaeological claim to burial site in county park threatens integrity of remains
52.	Article, Huron (S.D.) Daily Plainsman, June 25, 1979, "Ancient Indian village in danger"	National Historic Landmark with gravesites to become a housing development, Pierre, SD
53.	Letter, Native American Rights Fund to Assistant Attorney General, State of Oklahoma, October 2, 1978, and Stipulation and Order on Dismissal, Alan J. Little Raven v. Norman Hess, CV 77-165-C, US District Court, Eastern District, Oklahoma, 1978	prison problems: access to religious implements, to natural products, to spiritual leaders, right to hold religious meetings

	DOCUMENT	CONTENTS
54.	Letter, Native American Rights Fund to HQ, 4th Inf Div, Ft. Carson, Colorado, October 27, 1978	peyote possession by Native American Church member in US Army
55.	Cover letter, Native American Rights Fund to Task Force and Memorandum of Decision, Samuel Pokrywka et al. v. Weld County School District et al., Civil Action #24786, 1974. District Court, County of Weld (Colorado)	denial of student's long hair overturned on religious grounds alone;
56.	Letter, Native American Rights Fund to Superintendent, Chemawa Indian School, March 21, 1979	sweat lodge denied
57.	Testimony of Buffalo Tiger, Chairman, Miccosukee Tribe	access to sites; tribe should have [illegible]hority to restrict access t[illegible]-Indians; collecting of non-endangered plants and animals; possession of eagle feathers; access to cemeteries for burials, no violation of burial sites without tribal approval
58.	Letter, Jack Jackson, Navajo Medicine Men's Association to Native American Rights Fund, June 21, 1979	access to sites at San Francisco Peaks, Mt. Taylor, Blanca Peak, Hesperus Peak; non-native (hence non-ceremonial) plants used to reseed stripmined land drives out native species of great value to religious practice; list of native flora on Black Mesa and elsewhere; list of museums with religious objects, including Navajo National Monument
59.	Letter, John J Wood, Associate Professor of Anthropology, Northern Arizona University, to A/S-IA, July 10, 1979, and Paper, J.J. Wood & W.M. Vannette, "Preliminary Assessment of the Significance of Navajo Sacred Places in the Vicinity of Big Mt., Arizona," 38 pp., contracted by the Navajo-Hopi Indian Relocation Commission	relocation of Navajos occupying Big Mt. to outside Hopi partitioned area of the Joint Use Area, Arizona

	DOCUMENT	CONTENTS
61.	Letter, Burgess Primeuax, NARF, to Task Force, July 27,1979; Letter, Paul E Frye, DNA-People's Legal Services, to NARF, July 17,1979 without stated enclosures	Bureau of Land Management Environmental Impact Statement on Star Lake-Bisti coal strip mining proposal, Navajo Reservation, fails to consider American Indian Religious Freedom Act
62.	Transmittal to A/S-IA; Letter, Sen. Hayakawa to Secretary of Interior, June 26, 1979; Letter, Matt Murray to Sen. Hayakawa, June 7, 1979	Marin County, California urban development over American Indian burial sites
63.	Letters, G.A. Van Otten to the President, March 13, 1979, Sid Jaffe to BIA, March 2, 1979; Telegram, Elizabeth Park to the Secretary of Interior (SOI), February 23, 1979; Letters, A.E. Rockwell to SOI, February 20, 1979, L.D. Avery to Interior Dept., February 22, 1979, Jack Kirschman to SOI, February, 1979, L.V. Weslowski to SOI, February 24, 1979, Robert Faller to SOI, n.d., B.A. Roy to SOI, March 19, 1979, Catherine Gatsco to SOI, February 15, 1979, Kathleen Clark to SOI, March 7, 1979; Mailgrams, Devinder Singh to SOI, February 24, 1979, Rachel Dee to SOI, February 26, 1979; Letters, Ed Sutton to SOI, February 23, 1979, Richard Searle to SOI, February 28, 1979; Mailgrams, C.D. Lind to the President, and to SOI, February 22, 1979, LaDonna Harris to SOI and Assistant Secretary-Indian Affairs, February 23, 1979, unsigned to SOI, February 22, 1979, Barbara Simes to SOI, February 22, 1979, Diana Carol, et al., to SOI and to Assistant Secretary - Indian Affairs, February 25, 1979; Letter, N.B. Sawed to the President, March 23, 1979; Mailgram, Edith Neece to SOI, February 26, 1979; Letters, Leilani Squire to the President, February 17, 1979, Rhonda Friend to SOI, n.d., Vonn Ritter to SOI, n.d., S.E. Tustin to the President and SOI, March 23, 1979, James Blue Wolf to SOI, n.d., T.P. Fox to SOI, n.d.	opposing development on San Francisco Peaks, Arizona

	DOCUMENT	CONTENTS
64.	Letter, M.A. Brown to BLM, January 7, 1979 and to Robert Gregg, December 4, 1978; Article, unidentified newspaper, "Development Decision due on Snow Bowl," December 23, 1978; Mailgram, Medicine Wheel Touch to SOI, February 22, 1979; Letters, Pat Hill to SOI, February 12, 1979, Sherry Muyres to President and to SOI, March 1, 1979; Leaflets (2) "Save San Francisco Peaks;" Letters, James Conastryleson to SOI, February 22, 1979, J Robar to SOI, February 21, 1979.	opposing development on San Francisco Peaks, Arizona
65.	Letter, John Silva to BIA, July 5, 1979	
66.	Letter, Native American Heritage Commission, State of California to Task Force, June 20, 1979 and Mailgram, June 22, 1979	
67.	Letter, W.W. Downes, Jr., to BIA, June 5, 1979	hair standards at Utah State Prison violate inmate's ceremonial practices
68.	Letter, J.J. Hall to the President, Secretary of Interior and Assistant Secretary - Indian Affairs, July 16, 1979	easements to aboriginal areas of Native Hawaiians necessary; need for inventory of Native Hawaiian sites
69.	Letter, T.J. Ferguson, Zuni Archaeological Program, to HCRS-IAS, July 19, 1979	religious values should take precedence over archaeological ones in questions of exhumations; inundation of sites need not be sufficient reason to exhume burials; disposition of gravegoods should be in control of tribe
70.	Letter, Walter Echo-Hawk, NARF to Sen. Dale Bumpers	disturbances of burial sites
71.	Letter, Trudy L. Brinar, Chairperson of Pismo Heritage Council, July 20, 1979	seeking protection for the Pismo Chumash village site
72.	Statement, July 19, 1979, Pismo Heritage Council	proposals to avoid damage to Chumash Indian village site - urges archaeological and historical park status

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73.	Memorandum of Concern - San Francisco Peaks, NARF/AILC American Indian Religious Freedom Project, January 17, 1979	development at San Francisco Peaks, Arizona
74.	Affidavits of Tom Watson, November 13, 1978, M.C. Mitchell, November 28, 1978, F.D. Tsosie, November 17, 1978; Resolution, Navajo Medicinemen's Association, n.d.; Resolution, Navajo Nation Health Symposium, August 14, 1978; Resolution circulated on Navajo Reservation; Statement of Emil Tso, Jr., Statement of Fred Kaye, Statement of Tsinnijinnie Singer; Resolution of Tuba City Community Chapter, June 27, 1974	development at San Francisco Peaks, Arizona
75.	Letter, Robert E Lewis, Governor, Pueblo of Zuni to Secretary of Interior, March 12, 1979	development at San Francisco Peaks, Arizona
76.	Letter, Boyden, Kennedy, Romney and Owens to Assistant Secretary - Indian Affairs, April 5, 1979	development at San Francisco Peaks
77.	Letter, L.J.L. Riley to Secretary of Interior (SOI), February 22, 1979; Telegram, Thomas Seiler, et al., to SOI, February 23, 1979; Telegram, Barbara Klide to SOI, February 22, 1979;	development at San Francisco Peaks, Arizona
78.	Mailgram, Colleen Wells to Secretary of Interior, February 8, 1979	development at San Francisco Peaks, Arizona
79.	Letter, John MacKinnon, DNA-People's Legal Services, to Assistant Secretary - Indian Affairs, June 18, 1979; Letter, John MacKinnon to Task Force, January 12, 1979; Letter, John MacKinnon to Secretary of Interior, November 21, 1978	development at San Francisco Peaks, Arizona
80.	Letter, American Indian Law Center to Task Force, January 12, 1979	development at San Francisco Peaks, Arizona

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81.	Letter, M.A. Brown to NARF, December 4, 1978	development at San Francisco Peaks, Arizona
82.	Letter, M.A. Brown to M.A. Kerrick, July 27, 1978; Article, unidentified periodical, no title	development at San Francisco Peaks, Arizona
83.	Epigraphical transcription: general description of San Francisco Peaks, Arizona	
84.	Letter, Alika Cooper, to Secretary of Interior, June 21, 1979	inadequate notice of consultations; National Park Service administrators, who control most of Native sites, do not understand Hawaiian heritage and thus cause desecration; Fish & Wildlife Service has posted "no trespassing" signs on many Leeward Island sites which contain Native religious and cultural sites; Kaula Island used as aerial gunnery range, destroying bird population, is home of Shark (family amakua); Pearl Harbor, a religious Shark area, off-limits to Natives; naval bombing of Kahoolawe Island; konohikis (religious oriented fishing rights) denied
85.	Letter, Rev. Garrett Lear to Secretary of Interior, June 16, 1979; specimen of petition	supports protection and revival of Native Hawaiian religion
86.	Statement of Anne Nanikeakaokalani Kauaihilo, no date; advertisement, Honolulu *Star-Bulletin and Advertiser*, June 11, 1978	US Navy should have control over Kahoolawe Island, because "How many ko'a or small fishing shrines do we need to tell a simple pagan story?"
87.	Statement of Keoni Agard, member, Congress of Native Hawaiian People	summarizes oral testimony of Ms Agard

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88.	Letter, Peggy Hao Ross to Secretary of Interior, June 13, 1979; Letter, Peggy Hao Ross to the President, April 19, 1979; Letter, Liliuokalani Ross to HQ 14th Naval District, no date; Letter, 14th Naval District to Ms. Ross, December 22, 1977; Letter Third Fleet to Ms. Ross, December 23, 1979; Letter, Ms. Ross to the President, January 6, 1978; Letter, Secretary of the Navy to Ms. Ross, February 2, 1978; Statement of Liliuokalani Kooweskoowe, April 13, 1978; Letter, Peggy Hao Ross to HQ, Third Fleet, April 26, 1979; Article, "Navy Tests its Strength", n.p., n.d.; Flyer of 'Oha'na 'O Hawai'i	summarizes oral testimony of Peggy Ha'o Ross
89.	Testimony of Brown & Bettencourt, attorneys for Native Hawaiian Legal Corporation, June 1979, "Proposal Legislation...;" Letter, Cynthia H. Thielen to Secretary of Defense, May 4, 1979; Letter, Ms. Thielen to Task Force, June 7, 1979; Letter, Haunani-Kay Trask to HQ, Third Fleet, May 11, 1979; Letter, Third Fleet to Dr. Emmett Aluli, May 29, 1979; Letter, Cynthia H. Thielen to Third Fleet, June 4, 1979; Letter, Ms. Thielen to Task Force, June 21, 1979	proposed legislation for access to Native Hawaiian religious sites; requests full Navy consultation with religious leaders; attacks Navy consultation on issue of Kahoolawe Island, claims Native arrests and two deaths for trespass on island; complains that Navy's June 13, 1979 consultation was by "personal invitation only."
90.	Statement, Nolan Chock, June 12, 1979	summary of oral testimony of Mr. Chock
91.	Statement, Randy He'ano Kalahiki, Sr., June 13, 1979	summary of oral testimony of Mr. Kalahiki
92.	Statement, Bob Stauffer, Native Hawaiian Legal Corporation, January 1979, to Advisory Board, Religious Freedom Project, NARF/AILC	outlines Hawaiian religious issues concerning wildlife and plants, access to sacred sites, museums and artifacts, employment, and recommendations for remedial action

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93.	Letter, Jack Quetone, Chairman, Kiowa Chapter, Native American Church, to NARF 6 June 1979	requesting further consultation at Anadarko, Oklahoma
94.	Statement of John Flynn, 7 June 1979	PL 95-341 has been instrumental in access conflict at Point Conception, California. Agreement was signed with private landowner and enforced by courts.
95.	"Pipe Ceremony and Sweat Lodge" Archie Fire Lame Deer, 4 April 1979	background overview of ceremonies and their role in rehabilitation of Native American ex-offenders
96.	Policy Statement, Advisory Board of Religious Freedom Project, NARF-AILC, 8 July 1979	proposes recommendations on treatment of burial sites, on access to sacred places and on right to use natural products
97.	Document, "Sacred Sites: Cultural Problems Prevent Adequate Protection," Religious Freedom Project, NARF/AILC, July 7, 1979	consultation discussion document; no laws specifically protect holy places for Native religious use; why cultural problems have prevented federal officials from applying existing laws to protect holy places; suggestion that specific legislation may be indicated to provide clear guidelines
98.	Letter of Walter Echo-Hawk, June 22, 1979; Article, "Comparative Parole Treatment of American Indian and Non-Indian Inmates in US Federal Prisons, FY 1973-74," Bureau of Social Science Research	US Parole Commission should evaluate its procedures; certain parole criteria ipso facto discriminate against members of Native American Church
99.		denials of religious freedom by OSP settled by litigation
100.		NP-Massachusetts denied Natives sweat lodge and sacred pipe
101.	Letter, James Schermerhorn, Director, OIR, March 30, 1979	explains why OIR rarely takes Native religious freedom cases
102.	Affidavits of Mad Bear Anderson, Crow Dog, Deward Walker, Robert Thomas, Jerold Levy, and others	explains religious beliefs and practices regarding traditional Native hair styles and customs

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103.	Affidavit of Wayne Woolverton; Deposition of Robert Raines, corrections administrator	explains why it is unnecessary to require prisoners to wear short hair
104.	Brief filed in Crowe v. Erickson	Native inmate hair issue
105.	Testimony of Archie Fire Lame Deer; Intervenors' initial and reply briefs filed in FERC proceding	development at Point Conception, California
106.	Statement, "Plaikni Village: Rebirth of the Spirit;" Letter, Charles Kimbol, Chairman, Klamath Tribe, to Edison Chiloquin, n.d.; Letter, Mel Tonasket, President, American Council of American Indians, to Mr. Chiloquin, December 7, 1974; Letter, Gordon Bettles to Rep. Ullman, June 29, 1978; Letter, Clayton Schultz, Klamath, June 30, 1978; Letter, Roby E. Hanan, Mayor, Chiloquin, Oregon, to Rep. Ullman, June 30, 1978; Letter, Nell Kuonen, Klamath County (Ore.) Commissioner, to Rep. Ullman, June 30, 1978; Letter, Ms. Hanan to Rep. Ullman, June 30, 1978; Letter, George Manuel, President, National Indian Brotherhood, Ottawa, Canada, to Mr. Chiloquin, December 7, 1974; Letter, Winema National Forest to Mr. Chiloquin (part), August 30, 1976; Press release, draft, July 2, 1976.	Edison Chiloquin case; man who refused settlement in Klamath termination action was granted occupancy rights to National Forest land for construction of ceremonial structures.
107.	Editorial, Carson City Nevada Appeal, June 29, 1979	opposes, inter alia, transfer of ownership of Wildhorse Reservoir fishing rights to Duck Valley Band of Indians and absence of state fishing permits in addition to Indian ones at Pyramid Lake.
108.	Article, "Ancient Indian site in Valley threatened by developments," Nevada Appeal, June 25, 1979; Article, "Struggle to save Indian site," Nevada Appeal, June 26, 1979; Article, "Controversial subdivision OK'd," Nevada Appeal, June 29, 1979.	sewage wetlands project threatens 12,000 year old intact Washoe and pre-Washoe burial site in Carson Valley, Nevada.

DOCUMENT	CONTENTS
109. Letter, Bill Frank, Jr., Vice Chairman, Northwest Indian Fisheries Commission, to Task Force, July 30, 1979, and Statement, Bill Frank, Jr., Nisqually	religious smokehouses no longer allowed at Muck Creek, Ft. Lewis; decline of salmon and steelhead runs on Nisqually River; Alder Dam on Nisqually River, 1940s, failed to provide spring salmon access; introduction of fall salmon by state depleted spring salmon runs, used for spring ceremonies; Bureau of Commercial Fisheries (NMFS) promoted saltwater catches which prevented conservation on individual runs; artificial hatcheries and diversion of hatching sites to other uses fails to consider traditional ceremonial fishing sites, e.g., North Fork, Skokomish River, Centralia Diversion, Nisqually River; Canada and Alaska fishers intercept stocks; Commerce Dept. fails to regulate ocean troll fleet at expense of ceremonial fisheries; not enough fish even for ceremonial purposes; chum salmon for winter ceremonies, funerals, weddings are gone, including important fall chum run on Nisqually River, all chum on Puyallup and Green Rivers; FWS distribution program of hatchery chum to tribes for ceremonial use discontinued this year; Muck Creek chum habitat used by US Army, Ft. Lewis, as rocket range and tank course; threat of competition from sport fishers on steelhead runs, important winter ceremonial fish; lack of access to black carrots, pe[illegible]e' roots; lack of access to mountains, to mountain campsites; lack of access to huckleberry grounds; FS no longer allows access to commercially unusable cedar trees for ceremonial longhouse frames; lack of access to shellfish, to halibut, to seals and whales; sweat ceremonies interrupted by artillery shelling at Fort Lewis.

DOCUMENT	CONTENTS
110. Statement, Delfin J. Lovato, Chairman, All Indian Pueblo Council, August 9, 1979, Position Paper Regarding American Indian Religious Freedom - AIPC review of draft final report, generally agreeing with report but raising points of special concern to the 19 Pueblos	all lands traditionally occupied and travelled by Pueblos, and ability to commune with those lands, are important to religious practice; any subject federal policy should be applied to all lands, not only isolated sacred spots, but also to broad areas for Pueblos to commune with heritage lands; Pueblo leaders find no change in federal land-managing agencies' practices since passage of P.L. 95-341; more than Executive Order needed to change attitudes; need statutory framework for protection of religious practices, lands, objects on same basis as protection for ecologically sensitive areas; agencies need directives for tribal consultation for procedures for unrestricted access to and use of sites, areas, objects, with minimal or no documentation and no permit requirements; any statutory or regulatory scheme should ensure unrestricted religious ceremonial hunting and fishing, including areas under state control, with management reliance on tribal conservation traditions, rather than artificial quota system; protection of waters of religious significance, with no federal actions to diminish or degrade natural flows taken without due consultation with affected tribes; agencies initiating or approving projects or actions affecting sacred lands or objects should be required to notify and consult with affected tribes in land-use planning, without limitation to those instances where existing environmental law applies

	DOCUMENT	CONTENTS
111:	Letter, July 5, 1979, from Edward K. Thomas, President, The Federation of Southeast Alaska IRA Councils, to John Hope, BIA, Juneau	P.L. 95-341 very important to the traditional lifestyles of Alaska Natives; those who depend upon the subsistence way of life should be able to participate in hearings; most people who depend on subsistence living are on the waters or in camps for the summer gathering food and materials for the winter; request that every effort be made to conduct hearings either in early spring or mid-fall.
RFP	Submission, Religious Freedom Project of the Native American Rights Fund/American Indian Law Center, "Summary of Federally-Related Native Religious Problems as of July 5, 1979"	problems identified by means of a survey of all tribes and Native groups

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY [illegible] 1979

MEMORANDUM

TO: Members, Task Force to Implement the American Indian Religious Freedom Act

FROM: Assistant Secretary - Indian Affairs

SUBJECT: Scheduled Consultations

As most of you are aware, field consultations with Native traditional religious leaders have been scheduled throughout the United States during the month of June. Notices of consultation have been mailed to Native tribes, organizations, individuals and BIA field offices for their information and distribution. The notices have been provided to the DOI/HEW/CSA-funded project, which is assisting with the implementation of P.L. 95-341, for distribution through the project advisory body of religious and tribal leaders. Individual notices are attached for your supplementary distribution.

Upon receipt of this schedule, please indicate by return call to my office the consultation meetings you will attend and the name and contact number of your representative to those meetings you cannot attend. Those who have provided this information to Ms. Suzan Harjo need not further confirm. For confirmation and further logistical information, you may contact Ms. Harjo, Ms. Susan Hvalsoe (both at 343-6031), Ms. Mozelle Henry or Mr. Rodger Boyd (both at 343-7163). Thank you in advance for expediting this process.

I wish you much success in the consultation meetings. In addition to those listed in the attachment, schedules and sites are now being finalized for meetings in Alaska and elsewhere. This information will be circulated as soon as all dates and arrangements are made.

Forrest J. Gerard

Attachements

June 7 and 8	Cheyenne River Swiftbird Project Cheyenne River Sioux Reservation Eagle Butte, South Dakota Focus: Religious traditions and customs in relation to prison facilities, military installations and schools.
June 11 and 12	Minnesota Chippewa Tribal Chambers Cass Lake, Minnesota Focus: Ceremonial hunting, fishing and gathering; access to ceremonial grounds, sacred sites and gathering areas; and other issues relating to the Bureau of Prisons, the Indian Health Service, the U.S. Customs Service and the Social Security Administration.
June 13	National Park Service Facilities Honolulu, Hawaii General Consultation with Native Hawaiian representatives.
June 14 and 15	Chief Joseph Cultural Center Confederated Tribes of the Colville Reservation Nespelem, Washington Focus: Burial sites, cooperative study and construction agreements, access to sacred sites, and the use and disposition of ceremonial objects and artifacts.
June 19 and 20	U.S. Customs Service Committee on Indian Affairs Conference Room - Holiday Inn Great Falls, Montana Focus: Cross-border travel, transportation of sacred objects, and other issues being considered by the U.S. Customs Service Committee on Indian Affairs.

June 22 and 23

Zuni Recreation Center
Pueblo of Zuni
Zuni, New Mexico

Focus: Access to sacred sites, ceremonial grounds and gathering areas; ceremonial and traditional use of animals and birds; and the use and collection of natural products.

June 26 and 27

University of Oklahoma
Oklahoma Memorial Student Union Building
Dining Room #6 - 900 Asp Street
Norman, Oklahoma

Focus: Use of natural products, animals and birds in religious ceremonies; access to ceremonial and religious areas; and Native tradition and custom in regard to educational and health facilities and practices.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAY 28 1979

SCHEDULE OF RELIGIOUS FREEDOM CONSULTATIONS

June 7 and 8	Cheyenne River Swiftbird Project Cheyenne River Sioux Reservation Eagle Butte, South Dakota Focus: Religious traditions and customs in relation to prison facilities, military installations and schools.
June 11 and 12	Minnesota Chippewa Tribal Chambers Cass Lake, Minnesota Focus: Ceremonial hunting, fishing and gathering; access to ceremonial grounds, sacred sites and gathering areas; and other issues relating to the Bureau of Prisons, the Indian Health Service, the U.S. Customs Service and the Social Security Administration.
June 13	National Park Service Facilities Honolulu, Hawaii General Consultation with Native Hawaiian representatives.
June 14 and 15	Chief Joseph Cultural Center Confederated Tribes of the Colville Reservation Nespelem, Washington Focus: Burial sites, cooperative study and construction agreements, access to sacred sites, and the use and disposition of ceremonial objects and artifacts.
June 19 and 20	U.S. Customs Service Committee on Indian Affairs Conference Room - Holiday Inn Great Falls, Montana Focus: Cross-border travel, transportation of sacred objects, and other issues being considered by the U.S. Customs Service Committee on Indian Affairs.

June 22 and 23

Zuni Recreation Center
Pueblo of Zuni
Zuni, New Mexico

Focus: Access to sacred sites, ceremonial grounds and gathering areas; ceremonial and traditional use of animals and birds; and the use and collection of natural products.

June 26 and 27

University of Oklahoma
Oklahoma Memorial Student Union Building
Dining Room #6 - 900 Asp Street
Norman, Oklahoma

Focus: Use of natural products, animals and birds in religious ceremonies; access to ceremonial and religious areas; and Native tradition and custom in regard to educational and health facilities and practices.

June 29

Qualla Civic Center
Acquan Road
Eastern Band of Cherokee Indians
Qualla Boundary
Cherokee, North Carolina

June 30

Reno/Sparks Tribal Facilities Building
34 Reservation Road
Reno, Nevada

July 12

Anchorage Agency
Bureau of Indian Affairs
Conference Room
1675 C Street, Kaloa Building
Anchorage, Alaska

Focus of final three consultations: Protection and preservation of traditional, ceremonial and religious objects, customs, practices, sites and artifacts.

Local contact, North Carolina: Maxine Hill, Museum of the Cherokee Indian (704-497-3481).

Local contact, Nevada: Harold Wyatt, Executive Director, Inter-Tribal Council of Nevada (702-786-3128).

Local contact, Alaska: John Hope, Office of Tribal Operations, Bureau of Indian Affairs (907-586-7198).

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

NOTICE OF RELIGIOUS FREEDOM CONSULTATION

Cheyenne River Swiftbird Project
Project Facilities
Cheyenne River Sioux Reservation
June 7-8, 1979 (Thursday and Friday)
(Starting at 9:00 a.m. each day)

The American Indian Religious Freedom Act of 1978 sets forth the policy of the United States to protect and preserve the inherent right of American Indian, Eskimo, Aleut and Native Hawaiian people to believe, express and exercise their traditional religions.

The Act calls for an evaluation of the federal agencies' policies and procedures, as they affect the religious rights and cultural integrity of Native Americans, and requires that the President report the agencies' findings and recommendations to the Congress in August of this year. The preparation of this report accords us the opportunity to rethink antiquated governmental policies, to develop uniform approaches and procedures, and to measure existing practices against practical experience. The Act mandates that the evaluation be conducted in consultation with Native traditional religious leaders.

The Task Force to Implement the American Indian Religious Freedom Act will conduct a series of consultation meetings in June throughout the United States. The consultation at Swiftbird will focus on religious traditions and customs of Native peoples in relation to prison facilities, military installations and schools. The consultation and official record will be open to those wishing to address these subject areas, as well as other topics related to the Native religious concern.

For more information, please contact: Suzan Shown Harjo, Special Assistant to the Assistant Secretary - Indian Affairs (202-343-6031), Melvin Garreau, Chairman, Cheyenne River Sioux Tribal Council (605-964-4155), or Rick Williams, Director, Cheyenne River Swiftbird Project (605-733-2466).

Forrest J. Gerard

Assistant Secretary - Indian Affairs

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

NOTICE OF RELIGIOUS FREEDOM CONSULTATION

Tribal Chambers
Minnesota Chippewa Tribe
Cass Lake, Minnesota
June 11-12, 1979 (Monday and Tuesday)
(Starting at 9:00 a.m. each day)

The American Indian Religious Freedom Act of 1978 sets forth the policy of the United States to protect and preserve the inherent right of American Indian, Eskimo, Aleut and Native Hawaiian people to believe, express and exercise their traditional religions.

The Act calls for an evaluation of the federal agencies' policies and procedures, as they affect the religious rights and cultural integrity of Native Americans, and requires that the President report the agencies' findings and recommendations to the Congress in August of this year. The preparation of this report accords us the opportunity to rethink antiquated governmental policies, to develop uniform approaches and procedures, and to measure existing practices against practical experience. The Act mandates that the evaluation be conducted in consultation with Native traditional religious leaders.

The Task Force to Implement the American Indian Religious Freedom Act will conduct a series of consultation meetings in June throughout the United States. The consultation will focus on ceremonial hunting, fishing and gathering; access to ceremonial grounds, sacred sites and gathering areas; and other issues relating to the Bureau of Prisons, the Indian Health Service, the U.S. Customs Service and the Social Security Administration. The consultation and official record will be open to those wishing to address these subject areas, as well as other topics related to the Native religious concern.

For more information, please contact: Suzan Shown Harjo, Special Assistant to the Assistant Secretary - Indian Affairs (202-343-6031), or George V. Goodwin, Executive Director, Minnesota Chippewa Tribe (218-335-2252).

Forrest J. Gerard
Assistant Secretary - Indian Affairs

United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

JUL 12 1979

A5431(567)

Memorandum

To: Chief Anthropologist

From: Staff Archeologist

Subject: Cass Lake, Minnesota

Chaired by Jackson W. Moore, Jr., TF Member, National Park Service. Panel included Tom Boots, surr. USFS: Woody Snead, surr. BIA: Margaret Hall, surr. Bureau of Customs, Jeanne Rubin, surr. HEW. Observers included Jack Backer, Minn. DNR: Ralph Town and Jim Mattson, U.S.F&W.

A number of Chippewa of all ages entered the room, sat and listened, and then departed. Among the vocally articulate were Melvin Eads, a Sioux working with Indians who are incarcerated in the Federal and State prisons (but whose forearm was tatooed "A.I.M."): Richard Draves, a Chippewa with the Minnesota Department of Corrections, Kent Tupper, Attorney for the Minnesota Chippewa Tribe, Terry O'Brien, reporter for Community Outreach, Northern Community Radio Station KAXE-FM, Grand Rapids, Minnesota; a Winnebago Holy Man (Native American Church) from Madison, Wisconsin.

First issues raised concerned the rights of Indians who are imprisoned in Federal and State correctional institutions to practice traditional religion. In the Great Lakes area the Federal institutions show more flexibility than the State prisons. Specific offending practices are:

Dismantling of medicine bundles, defiling and neutralizing them,
Handling, probing, and perforating pipes;
Handling, probing, adn perforating drums;
Strip-searching the priests/Holy Man;
Denial of permission to construct sweat lodges;
Punishing prisoners who request these rights with solitary and/or transfers to other facilities.

Dismay was expressed by the audience that the Bureau of Prisons was not represented on the panel, despite the listing of Prisoners' Rights as a major issue on the agenda. The Chair observed that the Task Force could make no direct impact on the State facilities because the Act applied only to the Executive Branch of the Federal Government however, those State institutions which relied upon Federal funds and assistance would be affected, in proportion to such reliance. A pledge was also made to request the Bureau of Prisons to encourage the State facilities to initiate reforms compatible with the intent of the Act. The Chair called the Task Force Coordinator and requested that she ask the Bureau of Prisons to attend at least one other hearing.

Issues directed to the Bureau of Customs included the same offenses toward sacred objects, plus the interrupted movements of tribes, clans, and families whose lands are divided by the U.S. - Canadian border. Mrs. Maki was very aware of and sensitive to these problems. The Indians conceded that the U.S. Customs personnel were more senstitve and accommodating than the Canadians. This apparently stems from the fact that the U.S. abided by the terms of the Jay Treaty until it was abrogated by the Canadian Government when it acquired dominion status the Jay Treaty had been signed, not by Canada, but by Great Britain. Despite relative sensitivity, many medicine bundles and other objects have been desecrated, neutralized, and damaged by U.S. Customs officials and by State [illegible] personnel as well. Mrs. Maki reaffirmed a commitment by her region (of which she is Director) to educating inspectors and the screening of applicants for those posts to weigh sensitivity and awareness of Native American religious issues as a factor in selection.

The need was expressed to gain much quicker access to eagle feathers, and other bird and animal parts than at present. Since the NFS, FS, and State organizations all transfer their eagles, and other wild and endangered species carcasses to the FWS, Messrs. Town and Mattson responded. Initial application is to the Regional Enforcement Agent, who processes it and refers it to the Regional Director. The application is then transmitted to the National Repository at Pocatello, Idaho, where parts are selected, if available, by chronological priority, and mailed to the applicant. The process averages about 6 months. This is a hardship in that Native American ceremonies are not all conducive to long-term scheduling most, in fact, are planned no longer into the future than two weeks. The FWS observers said that they would convey this testimony to Mr. John Bardwell, their Task Force member. The usual request was made to F.S not to give eagle parts to just any Indian but to those applicants certified by a tribe as religious leaders.

Access to sacred sites, and to places to gather substances and materials was said to be inadequate without the ability to take just sufficient game to provision the participants. Examples were cited of Indians being ejected or arrested on parks and forests for taking a deer or cutting lodge poles. They were frequently unaware whether these lands were in a Federal or a State system, however. Mr. Becker stated that State laws had to apply to State lands. Messrs. Hoots, Moore, and Town stated that these concerns would be addressed.

Mr. Kent Tupper, attorney, addressed each agency, including the Minnesota DNR, citing instances which were in conflict with treaty rights as well as the practice of Native American traditional religions. He alleged that the NPS has abridged the right of the Grand Portage Band to build a marina - off the NPS area - because it is on a significant archeological site. The Chippewa do not consider the site significant and point out that earlier Fox and Chippewa had camps and villages at every site where they would want to place a similar (or other) facility today. Then as now, they located at the most suitable site. It was suggested from the Chair that it may have been the HCRS, rather than the NPS that objected to the site of the marina. If the proposed marina was to be very close to Grand Portage NM, then the NPS would object because of the visual intrusion into a historic scene. Mr. Tupper replied that Indians should not be restricted as to what they can do on Indian land to a greater extent than the General Services Administration. Of the two, the more lattitude should be extended to the Native Americans. The example cited was in Minneapolis recently when they wanted to construct a parking ramp for the Post Office Building. Archeologists determined that there was a significant prehistoric site there, but the G.S.A. overrode all protests and built the parking ramp. The Chair, and the panel conceded that the G.S.A. action reflected an improper and perhaps illegal decision.

Mr. Tupper stated that the Minnesota DNR daily violated treaty rights by interfering with fishing activities on State lands which are clearly affected by valid treaties. Offered a chance to respond, Mr. Backer stated that these issues would be resolved in the courts.

Further testimony was taken on the violation of the rights of Holy Men to enter and administer to their co-religionists in the prisons. In addtion to strip-searches, defilation of paraphernalia, etc., the Wisconsin facilities seized peyote, and in some cases paraphernalia. The Chair observed that the actual use of peyote, and its effects, are not understood by non-participants. It was suggested that perhaps slides or film-strips could be prepared, with appropriate narrative to convey to the prison officials just what does and does not occur during these observances. It was also suggested that, where a significant number of Native Americans are present in a facility, that Holy Men representing the Midewiwin, Native American Church, etc., might obtain resident Chaplain status. The Winnebago Holy Man stated that anthropologists, for one reason or another, are told lies about what the Native American Church really is, then they teach these distortions in the class rooms. He urged the Task Force to attend the National Conference of the Native American Church at Tama, Iowa, that coming Saturday. The Chair explained that this would be an impossibility.

/s/ Jackson W. Moore, Jr.

Jackson W. Moore, Jr.

cc: George Gowans, Office of Policy Management
Suzan Harjo, Bureau of Indian Affairs
Juanita Alvarez, Fish and Wildlife and Parks
John Bardwell, Fish and Wildlife Service-WA

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

NOTICE OF RELIGIOUS FREEDOM CONSULTATION

Farrington High School Auditorium
Honolulu, Hawaii
June 13, 1979 (Wednesday)
(Starting at 9:00 a.m.)

The American Indian Religious Freedom Act of 1978 sets forth the policy of the United States to protect and preserve the inherent right of American Indian, Eskimo, Aleut and Native Hawaiian people to believe, express and exercise their traditional religions.

The Act calls for an evaluation of the federal agencies' policies and procedures, as they affect the religious rights and cultural integrity of Native Americans, and requires that the President report the agencies' findings and recommendations to the Congress in August of this year. The preparation of this report accords us the opportunity to rethink antiquated governmental policies, to develop uniform approaches and procedures, and to measure existing practices against practical experience. The Act mandates that the evaluation be conducted in consultation with Native traditional religious leaders.

The Task Force to Implement the American Indian Religious Freedom Act will conduct a series of consultation meetings in June throughout the United States. The consultation and official record will be open to those and traditional leaders and elders wishing to address topics related to the Native Hawaiian religious concern.

For more information, please contact: Suzan Shown Harjo, Special Assistant to the Assistant Secretary - Indian Affairs (202-343-6031), Bob Barrel, National Park Service State Director (808-546-7584), or John Hough, Assistant to the Secretary, Seattle Office (206-399-0814).

United States Department of the Interior

NATIONAL PARK SERVICE

HAWAII STATE OFFICE
300 ALA MOANA BLVD., SUITE 6305
BOX 50165
HONOLULU, HAWAII 96850

IN REPLY REFER TO
H2217

JUL 11 1979

Memorandum

To: Assistant Secretary, Indian Affairs
Attention: Suzan Harjo

From: State Director, Hawaii

Subject: Religious Freedom Consultation, Honolulu, Hawaii, June 13, 1979.

Here's the original and one copy of the transcript of the consultation held in Honolulu on June 13. We have kept one copy in this office and have told people it's available for review here. In addition, there are copies of supplementary written testimony and some additional testimony from people who were unable to or did not choose to attend the consultation. There is also enclosed a summary of the meeting prepared by Commander Cummins, U. S. Navy, who sat quietly in the consultation as an observer. I think Commander Cummins' notes are very much worthwhile. A list of those who spoke is enclosed as is the sign-in sheet that includes others who were only observers, plus a list of government officials present.

There are, I think, fewer incomprehensible Hawaiian phrases than I expected. The general tenor of the testimony should be pretty clear at least. The following words show up often enough to need translation.

Aina - the land. Considered more than just earth and stones, implying "mother earth."

Mana'o - feelings, belief. Implies coming from the soul as well as the brain.

Kupuna - ancestor, old one; implying wisdom and knowledge of old Hawaiian ways.

Despite the short notice, perceived conflict with the Navy consultation, and relatively light turnout, I thought the consultation went pretty well. We Feds took our raps for past practices as well we should. But the general tone was constructive, and I think that there will be many who will want to work with us toward detailing the ways to allow and encourage freedom of native Hawaiian religious practices.

More written testimony may yet arrive. If it does, I will send it to you even though it may be too late for task force consideration. If any of this memo or of the testimonies is confusing, please give me a call. We in the National Park Service in Hawaii certainly view this as a first halting step in a long path leading toward mutual understanding and accommodation.

Robert L. Barrel

Enclosures

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. [illegible]

NOTICE OF RELIGIOUS FREEDOM CONSULTATION

Chief Joseph Cultural Center
Confederated Tribes of the Colville Reservation
Nespelem, Washington
June 14-15, 1979 (Thursday and Friday)
(Starting at 9:00 a.m. each day)

The American Indian Religious Freedom Act of 1978 sets forth the policy of the United States to protect and preserve the inherent right of American Indian, Eskimo, Aleut and Native Hawaiian people to believe, express and exercise their traditional religions.

The Act calls for an evaluation of the federal agencies' policies and procedures, as they affect the religious rights and cultural integrity of Native Americans, and requires that the President report the agencies' findings and recommendations to the Congress in August of this year. The preparation of this report accords us the opportunity to rethink antiquated governmental policies, to develop uniform approaches and procedures, and to measure existing practices against practical experience. The Act mandates that the evaluation be conducted in consultation with Native traditional religious leaders.

The Task Force to Implement the American Indian Religious Freedom Act will conduct a series of consultation meetings in June throughout the United States. The consultation will focus on issues regarding burial sites, cooperative study and construction agreements, access to sacred sites, and use and disposition of ceremonial objects and artifacts. The consultation and official record will be open to those wishing to address these subject areas, as well as other topics related to the Native religious concern.

For more information, please contact: Suzan Shown Harjo, Special Assistant to the Assistant Secretary - Indian Affairs (202-343-6031), Al Aubertin, Chairman, Colville Tribal Council (509-634-4591), Andy Joseph, Chairman, Colville Planning Committee (509-634-4591 ext. 232), and Adeline Fredin, Colville Tribal Historian (509-634-4954).

Forrest J. Gerard
Assistant Secretary - Indian Affairs

NAVAL LEGAL SERVICE OFFICE
NAVAL SUPPORT ACTIVITY
SEATTLE, WASHINGTON 98115

3 July 1979

From: Officer in Charge, Naval Legal Service Office, Seattle
To: Judge Advocate General of the Navy

Subj: American Indian Religious Freedom Act -- Task Force Consultation on the Colville Reservation, 14-15 June 1979; report of

Ref: (a) Telcon Office of the General Counsel (Mr. Richard Cornelius)/Naval Legal Service Office, Seattle (CDR Pinsoneault) of 11 June 1979
(b) Telcon Office of the General Counsel (Mr. Richard Cornelius)/Naval Legal Service Office, Seattle (LT Oliver) of 21 June 1979

Encl: (1) Subject Report

1. In accordance with the request expressed in reference (a), this office sent a representative to the subject religious freedom consultation 14-15 June 1979.

2. Lieutenant John T. Oliver, JAGC, USN, participated in the conference and prepared the report. A preliminary verbal summary was submitted in reference (b). This final report is included as enclosure (1). I have commended LT Oliver on the excellence of his report.

R. Lappin
R. LAPPIN

Copy to:
Richard Cornelius
Office of the General Counsel
Department of the Navy
Washington, D.C. 20360

Susan S. Harjo
Special Assistant to the Assistant Secretary
Department of the Interior
Washington, D.C. 20003

American Indian Religious Freedom Act -- Task Force
Consultation on the Colville Reservation, 14-15
June 1979

Ref: (a) American Indian Religious Freedom Act, P.L. 95-341,
42 U.S.C.A. 1996
(b) 1978 U.C.C.C.A.N. 1262

Encl: (1) Task Force Membership

1. Background: Reference (a) expresses the policy of the United States toward insuring the rights of native Americans to practice their traditional religions. This report summarizes that meeting. The names and addresses of the other participants are provided in enclosure (1).

2. Discussion. Reference (b) provides the legislative history and purpose behind the subject Act. Identified areas of unacceptable interference included the denial to native Americans of access to certain physical locations, unreasonable restrictions on the use of substances, and actual interference in religious events. Testimony given during the subject consultation focused on four general categories of substantial concern:

a. Restrictions on access to land and resources, including religious sites, hunting areas, and fishing grounds;

b. Interference with traditional Indian burial sites;

c. Possession and use of peyote and religious implements; and,

d. Development of the cultural and religious heritage of native Americans.

3. These topics will be discussed seriatim:

a. Access to Lands and Resources. Much of the testimony given at the consultation was tinged with anger, especially when discussing the manner in which the rights of access to religious sites and to pursue traditional Indian practices of a quasi-religious nature had been destroyed. A movie shown Friday morning, entitled "The Price We Paid," focused on the loss of the Columbia River as a result of the Grand Coulee Dam project. Although the dam was a tremendous boon to the entire Northwest, little benefit accrued to the Colville-area Indians. Meanwhile, the traditional fishing, hunting, and religious sites of the river valley were inundated in the reservoir. Even though salmon had been the basis for the diet (approximately 50%) and much of the culture, no provisions were made for salmon ladders in the dam construction. Today, the Colville-area Indian must buy salmon, often canned or frozen, brought in from the coast. Ed Palmantee, Sr., after explaining the religious significance and practical procedures for catching and distributing salmon prior to completion of the dam, turned to discuss the present paucity of fish and game on the reservation--and restrictions which have been imposed on Indians going off the reservation to traditional hunting areas. Moses Dick, of the Yakima tribal council, noted the significance of various ceremonies, including the salmon and deer ceremony, to the Seven Drums religion. Albert Louis, a cause célèbre among the proponents of the peyote-based Native

American Church (NAC) and an Indian "cultural renaissance," and Andy Joseph, the host of the meeting, spoke of spiritual sites in the northern half of the reservation, and area which was promised but never delivered to the Colville-area tribes. That large tract is now under the control of the U.S. Forest Service, which guarantees no right to access or to hunt and fish. There was universal agreement that access to native Americans traditionally tied to identifiable sacred sites ought to be unrestricted. Moreover, there was concensus that tribal elders ought to be able to regulate access to outsiders to avoid disturbing sacred sites.

b. Burial Sites and Reinterment. In the Thursday morning session, two members of the Colville Heritage Board, including Moses George, its chairman, spoke on the question of protecting Indian burial sites. Their position was that as much as possible, such sites ought to be left undisturbed. Andy Joseph, a key member of the tribe who acted as host for the meeting, stressed that Indian peoples were more than competent enough to develop archaeological sites and handle the relocation of burial grounds with little outside assistance. Mr. Joseph also testified that the cultural richness evidenced in archaeological excavations of Indian ruins ought to end up in museums and exhibits on the reservations. This led to general agreement that all material discovered during Indian-approved archaeological excavations should be the sole property of the native Americans concerned. Tribal elders should determine the disposition of any artifacts, reinterment of remains, and related matters.

Since Indian burial grounds are likely to turn up at any time during construction work in many areas, it was argued that a policy is needed in dealing with the problem. For example, a burial site was uncovered on Vandenberg AFB during excavation in conjunction with the space shuttle program. Reinterment was indicated, but long delays have been introduced by persons eager to study the remains and those averse to violating the sacred ground at all. In the meantime, time has been lost in completing the construction. Other cases were cited where reburial was put off for periods in excess of forty years--an inexcusable affront to native American people.

c. Peyote and Religious Implements. The use of peyote as an hallucenogenic drug during religious ceremonies of the Native American Church (NAC) was clearly the most controversial subject of the consultation. One minority group, largely composed of persons under 35 years of age, argued that the NAC was a bona fide religion and that peyote was absolutely essential to its practice. Elwood J. Koshiway, an NAC medicine man from Oklahoma, observed that the "tools" of religious instruction and worship in the NAC included gourds, eagle feathers, cedar, sweet grass, tobacco, and above all peyote. A petition was presented in support of the NAC, including the religious use of peyote, and condemning the prosecution and harrassment of NAC members as violative of the First Amendment. Albert Louis, a spiritual and cultural mentor among young Colville-area Indians, argued for toleration of all types of religious practices. A number of young people (between 20 and 35 years old) testified that peyote use was a "way of life" and the persecution of it by federal and state agents was reprehensible.

300

In contrast, a clear majority of those present, especially most of the older witnesses, condemned peyote use as a "recent phenomenon" totally foreign to traditional Indian worship in the Northwest. Ed Monaghan, an alcohol counselor with the Colville Federation, argued that it would be impossible to control the spread of peyote if it were permitted during religious rites. He termed the drug "very, very dangerous"--one more destructive influence in Indian life. Anita Cheer, a teacher in the reservation school, expressed great concern about the indiscriminate use of "peyote buttons" among school children. Sam Sampson of the Colville Tribe Business Council claimed that peyote endangered the health, security, and general welfare of the reservation, and thus could and should be proscribed by the elders. The general attitude appeared to be strongly against the use of peyote.

d. Cultural and Religious Heritage. Under this general topic area were several specific subjects:

(1) Sweat Houses. There was a good deal of testimony given about the Northwest Indian institution of "sweat houses" or "lodges" in which steam heat in a traditional setting expunged guilt and wrongful attitudes during "purification" rites. Harold Belmont, Project Coordinator for the Seattle Alcohol Treatment Center and Frank Albey, faculty member at the Chemawa Indian School, testified that sweat lodges were particularly effective in treating young Indians who were "walking in darkness" of alcoholism, drug usage, crime, or undergoing the intense cultural identity crises common to Indian young people. Even though sweat lodges were a nearly universal religious practice of Northwest Indians, and their success in rehabilitation programs is demonstrable, penitentiary, school, and reservation administrators have proven reluctant to include sweat lodges, which cost close to nothing, as part of the permissable cultural and religious practices at their facilities.

(2) Original Indian Shaker Church. A great deal of time was spent listening to sincere, emotional defenses of this faith, and how bible denominations--Catholic and Protestant--have sought to supplant the Shaker church on the reservation. The Shaker church is a combination of traditional Indian religious practices and the gospel message. Although in existence only since 1881, a large proportion of the Colville-area Indians are Shakers. The Shakers testified, inter alia, that the right of Indians to visit traditional religious sites, especially in the mountains in the Northern half of the original reservation grant, ought to be preserved.

(3) Traditional Indian Religious Beliefs. Moses George, the chairman of the Colville Heritage Board, stressed the long history of the "real religions" of native Americans. This religion centered on the strength and purity of body and mind deriving from a right relationship with the mountains, the forests, and the rivers. He argued that the influence of Western man and the Christian religion has led to a crisis of identity among native Americans manifested in alcoholism, drug use, and suicide.

(4) Medical Treatment. The insensitive treatment of native American patients in hospital and outpatient facilities

was criticized by Dr. Mark Emanual of HEW. To properly care for Indian health problems, Western doctors must understand the psyche and medical procedures of the people to be treated. Provisions must be made, in many cases, for special food, drink, and way of approaching life and death. There has been a tendency in the past to treat Indian patients without sensitivity, and for the patients to remain unassertive. This is changing. Dr. Emanuel related an annecdote of a young Indian woman who recently demanded that her baby's umbilical cord be preserved, since she believed that by keeping the cord with her, the child would always be safe and return to her A refusal to provide an exception to "hospital rules" in this case on the basis that "it's never been done before" was insensitive and inexcusable.

(5) Outside Influences. Lack of strong cultural and religious heritage is very prevalent in contemporary Indian life. Isadore Tom, a dramatic older spiritual leader, observed that this leads to despondency, alcoholism, drug use, sexual promiscuity, and in a large number of cases, suicide. He noted an analogy between traditional Indian and pure Christian teachings and stressed the need of Indian young people to learn and appreciate the infinite wealth of thier culture. This general theme was repeated by virtually every one who testified. Marie Grant, of the Cultural Resource Center, descried the century-long effort of missionaries and government to destroy the trappings of Indian culture. She noted the recent resurgence of interest in practicing the traditional way of life, where "to do an injustice to a neighbor was unthinkable."

(6) Burial Practices. The question of contemporary burial practices was raised by Moses Dick and Virginia Andrews, both members of the Seven Drums religion. In that traditional religion, a dead body is to be treated reverently and only by specially qualified handlers. The Seven Drums believe that Indian corpses not afforded proper respect and burial procedures may not come to life again. Moreover, they believe that once the body is interred, it ought not be disturbed.

(7) Music and Cultural Education. Phil George, a very articulate young member of the Nez Perce tribe presently serving as a student counselor at the University of Washington, stressed the special significance of music in the life of native American peoples. He argued that the Office of Education ought to be an integral part of the task force, since cultural and religious study engendered among Indians and others would show positive results. He argued that the present policy is to give little or no support to the study of Indian music or culture, even in predominantly Indian schools.

4. Summary and Application. Many of the problems discussed at the consultation are not relevant to the military services. However, there are four problem areas where additional study and action is indicated to fairly meet the purpose of the Act:

a. Access to Military Reservations. The federal government owns and controls a large proportion of the open land in the U.S., especially in the West and Southwest. Military reservations comprise a significant part of this land. A map provided to the task force by this office showed a minimum of juxtaposition of Indian and military lands through the U.S.

Procedures should be developed and promulgated by which concerned Indian leaders can make known to proper authorities the existence of bona fide religious sites on military lands. Accommodating such access requests would involve an ad hoc balancing of security and safety interests with the mandate of the subject Act. By placing the onus for identifying sites of religious significance on the Indians concerned and for developing an appropriate accommodation on the military authorities, difficulties should be minimized. Any good faith implementation of the Act would require making all parties aware of the procedures. Moreover, the federal commitment to Indian religious freedom should continue to be emphasized.

b. Burial Sites on Military Reservations. Every effort should be made to avoid disturbing known or suspected burial grounds or other religious sites on federal lands. If this is not possible, relocation of the site should be accomplished in a dignified manner, following the desires of Indian leaders fully integrated into the decision making process. Desires of archaeologists to study the site and any remains and artifacts ought to be entertained, but should not override the expressed desires of the tribal leadership. Since burial grounds are likely to be encountered during construction on military reservations practically anywhere, those involved in project management should be aware of the procedures for involving native American leadership in a respectful yet rapid relocation of burial grounds onto Indian lands.

c. Peyote and Religious Implements. As an hallucinogen, peyote is categorically unacceptable for use on military reservations. Such use cannot be permitted even when analyzed as a religious practice protected by the Constitution, since the good order and discipline of the military service requires certain limitations on civilian freedoms. Perhaps an Indian serviceman or woman who admits partaking of peyote during religious activities while on the reservation ought not be categorized as a "drug user" for security screening purposes, but even this is well within the discretion of the Armed Services. While one has a right to practice one's religion without state interference, one does not have a Constitutional right to a security clearance or a government job. Items of religious significance with no demonstrable security risk, such as gourds, eagle feathers, and sweet grass, ought not to be proscribed by military authorities. If a Christian may keep a Bible in his locker, a member of the Native American Church (NAC) ought to be able to keep the trappings of his belief, so long as no security problems are thereby presented.

d. Promoting the Religious Heritage of Native Americans.

As much as possible, military authorities ought to permit and to promote, including making available the necessary resources, the religious and cultural practices and heritage of native Americans. If practical, a base commander should grant requests to permit the building of "sweat houses" by interested persons. Military hospital administrators, especially those with a significant number of Indian patients, ought to review their procedures and training to insure maximum sensitivity to religious and cultural needs. Effective medical care dictates as much. This would likely require a greater identification of the desires of the native American serviceman and his family in treatment, including matters pertaining to burial care. It would also involve greater awareness of doctors, nurses, and administrative personnel of the needs of people of minority religions in general. As the consciousness of native Americans expand, military authorities should welcome the opportunity to enhance the cultural fabric of our land. This is especially true in view of the great contributions made by native American serviceman to our nation's defense.

5. Follow-up Reports. A *verbatim* transcript of the subject consultation was maintained. If desired, a copy can be obtained from Susan S. Harjo at the address provided in enclosure (1).

TASK FORCE MEMBERSHIP

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UNITED STATES GOVERNMENT FISH AND WILDLIFE SERVICE

Memorandum

TO : Regional Director, Regional Office (RD) DATE: June 28, 1979
Portland, Oregon

FROM : Staff Specialist (Fisheries), Area Office
Olympia, Washington

SUBJECT: American Indian Religious Freedom Act Hearing, Nespelem, Washington
June 14 and 15, 1979

At the request of Bill Meyer I attended the hearings in Nespelem, Washington on P.L. 95-341 (American Indian Religious Freedom Act). The Task Force to Implement the American Indian Religious Freedom Act conducted the consultations. Task Force members and other Federal representatives present included:

Suzan Harjo	Assistant Secretary's Office Indian Affairs - Chairperson
Paul Alexander	Civil Rights Commission, D.C.
Jackson Moore	National Park Service, D.C.
Tish Olivera	Tennessee Valley Authority
Jack Weatherspoon	Bureau of Land Management
Lt. John Oliver	U.S. Navy
Joe Watkins	Heritage Board - DOI
Woody Snead	BIA - Congressional Relations
Tom Hoots	Forest Service, D.C.

This report covers testimony that is relative to Fish and Wildlife Service responsibilities and was prepared from my notes. More specific information and information on other areas of testimony can be obtained from the official record of the hearings.

A number of witnesses were unable to present oral testimony because of lack of time. Their written testimony will be submitted to the Task Force at a later date. Through informal discussions I learned some of the concerns of these individuals and have included them in this report.

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1. Indian Fishing

Several witnesses presented testimony describing the religious significance and importance of salmon. Religious ceremonies were performed during all phases of salmon fishing. Medicine men were present during the construction of salmon traps. Supporting posts for the traps were tied together in a ceremonial manner by the medicine men. One Colville witness said that there were three salmon trap sites of religious significance. These were located at: 1) Kettle Falls, 2) mouth of the Twisp River (Methow River system), and 3) Methow River immediately downstream of the mouth of the Chewack River.

Women and children were forbidden to venture outside when the first salmon were expected. A religious ceremony was held after the first salmon catch. Because salmon were such an important part of their lives, during the first fish ceremony the entire fish was eaten to ensure that the salmon would always return.

In addition to the first fish ceremony, the eating of salmon was important at all other religious ceremonies. Salmon was served at marriages, funerals, memorials, and on Sundays. A religious ceremony was also held when a young boy caught his first fish.

The Colvilles said that because of the construction of Grand Coulee and Chief Joseph Dams they were the first Columbia River tribe to lose their fishing. Fish once comprised over 50 percent of their diet. The dams destroyed their way of life, eating habits, and a significant part of their religion. They now must purchase most of their ceremonial fish from the coast at great expense.

The Colvilles said that up to now they have received nothing for the loss of the salmon. Sam Sampson, council member, mentioned that the Fish and Wildlife Service stocks trout on the reservation but that the program will be discontinued in FY 1981. He said that the tribe's attorney in Washington, D.C. is getting information together on this policy change but did not indicate what action they planned to take.

The Colvilles have asked for $13.5 million for the loss of the salmon but expect to receive only $3.25 million in a claims case which is now before the Court of Claims.

Sam Sampson also testified that the tribe's only access to salmon fishing is limited to a very small fishery located immediately below Chief Joseph Dam. Salmon, mainly chinook and sockeye, hold in the colder water of the Columbia River below Chief Joseph Dam until the water temperature drops in the Okanogan River. Last year the Washington Department of Fisheries attempted to close this fishery because of the poor condition of the runs but the tribe succeeded in keeping it open. Mr. Sampson said the tribe would fight to keep this fishery open again this year. Mr. Sampson referred to the recent agreement between the Department of Interior and the Nez Perce Tribe in Idaho where the tribe will receive salmon carcasses from Service hatcheries because of the poor salmon runs in that area this year. He said that the Colvilles would be talking to their attorneys about working out a similar arrangement.

Moses Dick of the Yakima Tribe testified that the Yakima River was closed this year because of the poor return of fish. He said that it is difficult to obtain fish for their religious ceremonies because of the poor fishing. Ocean fisheries intercept a large percentage of the fish destined for the Yakima fishing areas.

Ken Hansen, a member of the Samish Tribe in Puget Sound, testified that his tribal members are denied access to salmon fishing because they are not recognized by the Federal government. He requested that the Task Force assess the Department of Interior's policy of not recognizing tribes.

2. Eagle Regulations

A number of individuals testified about the ceremonial and religious significance of eagle feathers. Eagle feathers are sacred, often buried with the dead and also are worn like flags. A major concern raised at the consultation was the long delay in processing requests for eagle feathers and other eagle parts by the Service. Some individuals said that responses often took more than a year.

Another concern was the condition of the feathers upon their receipt. One individual felt that the birds were not being properly handled at the depository in Pocatello, Idaho. He suggested that Indians that are aware of the proper methods of handling the birds should be given the opportunity to advise the Service on how to keep the feathers in good condition.

3. Migratory Bird Regulations

No testimony was presented on this subject.

4. Endangered and Threatened Species Regulations

No testimony was presented on this subject.

5. Marine Mammal Regulations

No testimony was presented on this subject.

6. Regulations Restricting Access and Activities on Lands Administered by the Service

The point was raised that historical and archaelogical surveys on Federal lands can't be fully evaluated if only State and Federal agencies are involved. Tribal involvement must occur to ensure that areas are thoroughly searched for sites of historical and archaelogical significance.

It has the general opinion of the witnesses that burial sites should be left undisturbed unless they are threatened with destruction. An example was given by Colville witnesses for burial sites located along Lake Roosevelt. Erosion caused by fluctuations in pool elevation is exposing and destroying burial sites. Under such circumstances most of the witnesses felt that the remains should be moved by tribal members to other locations for burial.

Frederick E. Olney

FEC:ne

cc: Office of Wildlife Assistance, DC
Tom Parisot, PDF, DC

United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

JUL 18 1979

A5431([illegible]7)

Memorandum

To: Chief Anthropologist

From: Staff Archeologist

Subject: Task Force hearings (PL 95341), Colville Reservation, Washington

Chaired by Task Force Coordinator Suzan Shown Harjo. Others on the panel included myself, TF member- NPS; Paul Alexander, TF member- Civil rights Commission; Tom Hoots, surrogate- ATS; Tish Oliveira, surrogate- [illegible]; Joe Watkins, TF member, HCRS; Woodrow Sneed, surrogate- BIA; [illegible], surrogate- [illegible]; Lt. , surrogate- USF; surrogate- [illegible]; Ward Weakly, surrogate-B[illegible]. Andy Josephs, Chairman of the Council for the Confederated Tribes of Colville, structured the format and served as host. Some 150 were in attendance.

Issues raised included the following:

1. Protection for sacred sites

2. Protection for graves - especially marked graves. Dismay was expressed that they are still waiting for the reburial of many burials which have been in museum storage cases for 40 years!

3. U.S. and Canadian Customs officials interrupt the free flow of visitation between friends and relatives artificially divided by the international boundary.

4. When Canadian Indians come down to help them pray, Colvillers pay them with "gifts" at "give-aways" and then the customs officials tax them when they cross back into Canada. The reverse also happens. These "give-aways" are probably the modern forms of the potlatch.

5. Prisoners' rights are being violated in the Federal prisons in the State of Washington. Examples: Christian and Jewish clergymen are courteously and allowed to minister freely; traditional Indian religious leaders are searched, sometimes strip-searched, their paraphernalia handled and abused. When leaving on the ferry, the Indian religious leaders were made to cease drumming and chanting, which was "disturbing the peace," while a group of fundamentalist Christians were singing

hymns accompanied by tambourines and guitars. The State of Oregon, on the other hand, has enacted legislation implementing reforms which comply with PL 95-341.

6. BIA and HEW called upon to introduce a strong Indian cultural program at Indian schools like Chemawa. Three years of correspondence showing a resistance to such a program on the part of school administrators was produced.

7. Representatives of the Indian Shaker Church recapitulated the origin of their church, and its early persecution by the "Bible denominations. They then attacked the Native American Church and its use of drugs (peyote).

8. A near-universal opposition to archeological disturbance of sites, a plea of objects to be retained by museums only as long as they could preserve and protect them "with dignity": such objects should never be destroyed or discarded, however, but returned to Indians!

9. Andy Joseph discussed the Colville "Tribe's" contract to do an archeological survey (thus terminating any further protests about non-funerary archeology). He conceded that there was some conflict with the State Archeologist.

10. The HEW was charged with insensitivity, ignorance, and violating Indian religion and tradition. An example given was the intimidating manner of physicians and nurses which made pregnant women and new mothers afraid to demand the navel cords of their infants, which are very important to traditional Indians.

11. The Forest Service, and by implication all land-managing agencies, were taken to task for not allowing the taking of tipi poles for temporary, ceremonial structures.

12. Some Shakers and Roman Catholics asserted that religious freedom was not needed at Colville Reservation, that what they presently had was what they intended to keep: the 7 Drum Religion of the host Nez Perce (Shamanism), Roman Catholic (Christian), Shaker (Christian variant). some Protestants (Christian). They denounced the Native American Church in unison as being "alien...non-traditional" at Colville...unable to control their peyote supplies, letting it get away from them and into the hands of the youth.

13. Several members of the Native American Church defended their faith, describing its benefits and good works, and how needed it was by the young Indians who go back and forth between the reservations and the urban communities. They contrasted how established they are elsewhere with how they are persecuted by the BIA police and by the "establishment Indians at Colville Reservation. Pleas were made to the Task Force for direct assistance.

A film "The Price We Paid" was presented which reviewed the hard times of the 19[illegible] for the Nation as a whole, and which motivated President Roosevelt to order the construction of the Grand Coulee Dam. The Colville Indians had lived well at that time, with plentiful salmon, farmland, game. But the [Executive Branch of the] Government took their land, flooded it, built dams with no fish ladders so that the salmon could no longer come upstream to spawn - all to make jobs for the White people. They made many promises of reimbursement, of providing the Indians with reduced cost electricity from the power plants - none of which had ever been kept. Congress did not, and has not, sanctioned the Lake Roosevelt [illegible] with legislative authority. They want (a) their salmon, whether by [illegible] fish-ladders or what; (b) money for their land; (c) the reduced rate electricity they were promised. They also want free access to their sacred sites at Kettle Falls and elsewhere. Discussions with Superintendent [illegible] indicate that the park will allow them access to Kettle Falls by boat, just like anybody else.

There was much testimony about the significance of salmon in the cultures a[illegible] religious of the Salishan peoples. The first-taking ceremonies were [illegible] conducted by adult males, since the salmon and the rattlesnake came out at the same time in May. Since the building of the dams salmon has to be bought and imported from the coast. It has a different color and texture and cannot be processed on skewers. Tribute was paid to the days 'before civilization' when Indians enjoyed life. After civilization Indians were "herded like cattle to waste-lands and kept there. Their language and their culture was suppressed. The role of the first takings ceremonies for all foods was described, showing how it inter-related with subsequent vision-quests and other revelations and tutorings to finally evolve a Healer. Healers are still acknowledged and respected by all of the religions at Colville Reservation.

Further testimony by a Yakima shaman and a Native American Church minister expressed the belief that a body (or skeleton) should only be handled by its own people. Otherwise, it cannot come back to life in the Hereafter. Some Roman Catholics also said that it is wrong for a grave to be disturbed only The People should handle a body. Most agreed, however, that it is wrong to have bones washing down the river. The Colville citizens put up $14,000 to retrieve skeletons for reburial with "incomplete Roman Catholic" rites. They want the numerous archeological sites protected from pot-hunters. They have negotiated with the Corps of Engineers to have artifacts turned over to the tribe once it gets a proper facility for them: funds are being sought.

All openings, recesses, and closings were accompanied by 7 Drum ritual and multi-faith prayers.

Council Chairman Josephs conducted a tour to the University of Washington archeological field camp, and several sites. This is a very large camp with salvage operations in progress at several of the sites. Dr. Manfred Jannings explained that the investigates NO cemeteries, and that any burials encountered by chance are recorded, covered back up, and the Tribal Council immediately notified. Otherwise, standard archeological procedures are followed.

/s/ Jackson W. Moore, Jr.

Jackson W. Moore, Jr.

cc: Daniel J. Tobin, Jr., Associate Director M&O
George Gowans, Chief-Office of Management Policy
F. Ross Holland, Jr., Assistant Director-Cultural Resources
Juanita Alvarez, Special Assistant-FWP
Suzan Harjo, Special Assistant-IA

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

NOTICE OF RELIGIOUS FREEDOM CONSULTATION

U.S. Customs Service Committee on Indian Affairs
Conference Room - Holiday Inn
Great Falls, Montana
June 19-20, 1979 (Tuesday and Wednesday)
(Starting at 9:00 a.m. each day)

The American Indian Religious Freedom Act of 1978 sets forth the policy of the United States to protect and preserve the inherent right of American Indian, Eskimo, Aleut and Native Hawaiian people to believe, express and exercise their traditional religions.

The Act calls for an evaluation of the federal agencies' policies and procedures, as they affect the religious rights and cultural integrity of Native Americans, and requires that the President report the agencies' findings and recommendations to the Congress in August of this year. The preparation of this report accords us the opportunity to rethink antiquated governmental policies, to develop uniform approaches and procedures, and to measure existing practices against practical experience. The Act mandates that the evaluation be conducted in consultation with Native traditional religious leaders.

The Task Force to Implement the American Indian Religious Freedom Act will conduct a series of consultation meetings in June throughout the United States. The consultation will focus on cross-border travel, transportation of sacred objects, and other issues being considered by the U.S. Customs Service Committee on Indian Affairs. The consultation and official record will be open to those wishing to address these subject areas, as well as other topics related to the Native religious concern.

For more information, please contact: Suzan Shown Harjo, Special Assistant to the Assistant Secretary - Indian Affairs (202-343-6031), or Winston E. Pitman, District Director, U.S. Customs Service (406-453-7631).

Forrest J. Gerard
Assistant Secretary - Indian Affairs

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

NOTICE OF RELIGIOUS FREEDOM CONSULTATION

Zuni Recreation Center
Pueblo of Zuni
Zuni, New Mexico
June 22-23, 1979 (Friday and Saturday)
(Starting at 9:00 a.m. each day)

The American Indian Religious Freedom Act of 1978 sets forth the policy of the United States to protect and preserve the inherent right of American Indian, Eskimo, Aleut and Native Hawaiian people to believe, express and exercise their traditional religions.

The Act calls for an evaluation of the federal agencies' policies and procedures, as they affect the religious rights and cultural integrity of Native Americans, and requires that the President report the agencies' findings and recommendations to the Congress in August of this year. The preparation of this report accords us the opportunity to rethink antiquated governmental policies, to develop uniform approaches and procedures, and to measure existing practices against practical experience. The Act mandates that the evaluation be conducted in consultation with Native traditional religious leaders.

The Task Force to Implement the American Indian Religious Freedom Act will conduct a series of consultation meetings in June throughout the United States. The consultation will focus on access to sacred sites, ceremonial grounds and gathering areas; ceremonial and traditional use of animals and birds; and the use and collection of natural products. The consultation and official record will be open to those wishing to address these subject areas, as well as other topics related to the Native religious concern.

For more information, please contact: Suzan Shown Harjo, Special Assistant to the Assistant Secretary - Indian Affairs (202-343-6031), or Robert Lewis, Governor, Pueblo of Zuni (505-782-4481).

Forrest J. Gerard
Assistant Secretary - Indian Affairs

United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

JUL 13 1979

A5431(5‹7)

Memorandum

To: Chief Anthropologist

From: Staff Archeologist

Subject: PL 95-341 Task Force Hearings, Zuni Reservation, N.M.

This hearing was chaired by Suzan Shown Harjo, TF Coordinator. The TF Panel consisted of Jackson W. Moore, Jr., TF member- NPS. John Bardwell, TF member- FWS; Latitia Oliveira, surrogate- TVA, Paul Alexander, TF member- Civil Rights Commission; Joe Watkins, TF member- HCRS; Woodrow Sneed, surrogate- BIA Bradley, surrogate- BLM; Dee Green, surrogate- L[illegible]. Observers included Bill Field, NPS, Southwest Region. Present at his own expense was Edmond J. Ladd, Pacific Archeologist, NPS. On the second day, Mr. Ladd would represent the Pueblo of Zuni, his permanent home.

Governor Bob Lewis, of Zuni Pueblo, opened the meeting with introductions of the pueblo's secular leadership. After a prayer in Zuni, Ms. Harjo directed the panel to introduce themselves and provide a brief overview on their agency's status vis-a-vis compliance with PL 95-341.

The Mescalero Apache presented the initial testimony. They compared the ease and availability of the Judeo-Christians in their religious observances to the restrictions against the Apaches in conducting their observances. They cannot worship at sacred mountain and desert sites without sneaking in to them (many are private land, which the Act cannot directly affect). They have to steal traditional food and substances, as they must steal eagle feathers. A long inventory of flowers and other plant forms, essential to religion and culture, must be either stolen or bought.

Border crossings are a serious and frequent problem to the Mescalero, and the plea was made to exempt them from these restrictions which divide families and communities.

A witness from Taos, a member of the PL 95-341 Advisory Board, testified to some length that Indians do not destroy nature. He then stated that the National Park Service set a trap for Indians catching eagle feathers and arrested them. [This has happened in the past. Unfortunately, it occurred again at Grand Canyon just three days before the hearing. Park officials conceded that the timing was very bad and that they are now reviewing these procedures. In their defense, the Indians had not requested a special use permit.]

He concluded his testimony with the observation that, from the beginning, too short a time frame had been allowed for Native American response to Federal agencies' plans for compliance with the Act.

Santa Clara Pueblos's witness expressed the need for access to sacred sites on short notice - that certain observances are not cyclically scheduled but responsive to a circumstance; in other words, emergencies come up. He was also concerned that there had been inadequate concern for, and communication with, Native Americans when legislation was drafted for the Antiquities Act, The Bald Eagle Act, the Migratory Bird Act, and the National Environmental Policy Act. Who will control lands under development in the future? Foreign ownership of private land adjacent to Santa Clara is very disturbing. The Santa Clarans want to keep their traditional sacred resources to themselves - in secret - to share with the neighboring pueblos.

The Lt. Governor of the Pueblo of San Felipe (48,000 acres) stated that each year the religious leaders have more trouble acquiring game to accompany ceremonial meetings and observances. He feels that the First Amendment should protect Native American religion against red tape and industrial development. Access is needed by San Felipans to Santa Fe and Cibola National Forests, and to the National Wildlife Refuge. He proposed "zoning specifications" for the procurement of wild game the year round for religious occasions. They have never taken more than was needed; the maximum was four deer.

The Chairman of the Hopi Nation stated that the Hopi were steadily losing both their shrines and their eagle-catching places. "Before us there was no Government, no state, and no Navajo - just Us!" The San Francisco Peaks "cannot be possessed by the White Man nor by the Navajo! The White Man made treaties with the Hopi and has since disregarded them." (ex. Collection of fees by the USFS for access to conduct ceremonies.) "The Navajo have prevented Hopis from taking an eagle on the disputed lands."

The USFS does deny access to holy men, so the Hopi want the San Francisco Peaks returned to them. The USFS representative responded that there have been no complete closures of Forests to Native Americans except during periods of fire hazard.

The Chief Priest of the Singer Society (Hopi) added that White visitors regularly take shrine offerings and artifacts, desecrating the holy places. The Navajo also prevent the collection of sacred substances. The Hopi "do not want to deny access to their reservation, just that they want non-Hopis to respect their religion."

On the question of Native American objects in museums. They must be returned!

Concerning eagles, the Hopi suggest a provision for blanket permits to gather feathers and parts: perhaps the Secretaries can delegate the permitting authority to the tribal governments, since they know who needs them and who doesn't. They feel that no Federal, State or Navajo police should have the right to prevent Hopis from gathering feathers and substances. Many eagles have now left because people live within 3 feet of their nesting areas. There sould be controls. The Hopi also expressed the need of ancestral Pueblo ruins for protection. The Antiquities Act of 1906 has never been adequate because it has no teeth. They can't get the U.S. District Courts to take any action on vandalism on reservations under current legislation. They also stressed the need for privacy in their sacred places, to avoid corruptive forces during ceremonies. The Hopi lack jurisdiction over two-thirds of their reservation, and the Federal agencies do not exercise protective authority in their jurisdiction.

[illegible] from Old Oraibi stated that the old prophesies about the evils of inventions have come true. Pollution, drunkenness, drugs, alterations of the landscape, the loss of Hopi lands, etc. were all produced as a result of the acceptance of alien ways, permissiveness (as practiced by the Tribal Government), etc. The Old Oraibians know who they are, and they will accept no new laws from any source!

An Arapaho religious leader also spoke for the Jicarilla Apache. Because of dimisishing sources and increasing regulations, four clans have [illegible] to consolidate eagle, crane, and game duck feathers, as well as other resources. The Arapaho and Jicarilla are concerned that their religions and cultures may not be preserved. They request exemption from some of the regulatory laws.

[illegible] Ute testified as an individual. He received his rites and eagle feathers from his father. He uses a lot of eagle feathers. He complained at the widespread misuse of eagle feathers by his "brother at pow-wows. He wants people to ston using the feathers in wrong ways. He grew up with "old folks and knows that eagle feathers are a way to invoke God."

An individual from a different Pueblo, Paul Tofayah, held aloft a copy of H.R. [illegible], decrying it as another example of what Native Americans have to go through. Despite an obvious and definite impact on them, no Native Americans were consulted during the drafting of the bill. The Task Force Coordinator agreed to look into that portion of the bill which affects Native Americans and see what changes might be obtained "on the Hill."

On the second day Edmond J. Ladd appeared as a witness for the Zuni Tribe. With his uncle, Governor Lewis, he participated in meetings with the religious leaders and various secular factions until 3:30 a.m. It was then decided that tradition would be broken and the religious leaders would meet, as a group, outside of a religious context, and confer directly with the Task Force. Before taking the floor, the Navajo, the Native American Church, and the State Archeologist were to be heard from.

The Navajo Men's Association expressed concern about religious paraphernalia being burned and destroyed. Their association was formed to deal with this since the Tribal Government is sometimes too cumbersome to do so. They were also concerned about a lack of controls on private and non-profit institutions coming in from off the reservation and carrying off objects to non-reservation museums.

A Flagstaff, Arizona lawyer, Dan Huffer, spoke for several client groups of Native Americans concerning the San Francisco Peaks. These peaks, managed by the USFS, contain sites sacred to various tribes. He stressed that access without appropriate ambience is meaningless. He refuted the USFS claim that the consultation which they received conforms with the Act. Consultation should preceed, not coincide with, the planning process. He expressed a need for regulations to make a sacred area safe for once and for all. At present, the USFS can acknowledge the significance of a sacred site in one context, but turn around next month and plan a new development for it, requiring that the process be repeated over and over again. For instance, saving a site from a mining proposal doesn't save it for a subsequent timbering proposal, or later a ski-lift proposal.

A Ute Mountain Ute said he hopes this law will enable the Native American Church to hold services off-reservation. He has had good cooperation from the State of Colorado, the USFS, and the NPS is procuring substances. Navajos have helped too. He hopes that the Native American in-put and the Task Force efforts will have tangible results. Most have not.

It was pointed out from the floor that seventeen peaks surround the Zuni country which are important to Zuni religion. They need legislative protection, and special designations. The shrines on the peaks were there before the establishment of the Federal governmment. Dr. Ned Danson suggested that any artifact taken from Indian or Federal lands should be in the returnable category.

The Zuni Tribal Archeologist, T.J. Ferguson asserted that cultural resources have spiritual, as well as physical, qualities. He proposed that a National Register of Sacred Sites be established which would be administered differently and separately from the National Register of Historic Places. Sacred sites are different from historic sites, and their esoteric qualities are much more endangered. He sees dangers in the State of New Mexico List of Cultural Properties. Sacred objects are being stolen now as in the past. Tribal museums which receive Federal money might, themselves, be impacted by law. He proposed a Sacred Objects Act as a companion to the Antiquities Act.

Task Force Coordinator Harjo drafted a Memorandum of Agreement between the Assistant Secretary, Indian Affairs and the Assistant Secretary, Fish and Wildlife and Parks to establish a National Register of Sacred Sites and passed it along to the Panel members.

Mr. Ladd introduced the Zuni religious leaders (except for the Bullhead Society which demurred). He explained in Zuni what he was going to do and then explained the Zuni pantheon, origin myths, and how they evolved to their current condition. Presumably no truly esoteric information was conveyed to us.

It was clear, from Mr. Ladd's revelations, that the Zuni consumption of eagle feathers is substantial. All significant occasions require the offering of prayer plumes, and even the poorest Zuni must offer them at least three times a year. Plumes are not re-cyclable, but must be "used

The leaders of the Rain, Bear, and Clown Societies stressed: the need for Native Americans to review plans well in advance of projects so that alternatives can be discussed; there are War Idols still in the Smithsonian Institution - they must be returned in order to protect the whole world; they need help in maintaining theor sacred sites.

Opponents to this whole procedure frequently attacked Ed and the leaders for breaking their traditons, and for fomenting dissention among Zunis by even broaching these profane and sacrilegious proceedings. They accused the tribal council of toadying to the Whites who will use the information to get rich and/or famous at the expense of the Zuni. Even so, the religious leaders each addressed the Task Force, Mr Ladd interpreting, and expressed gratitude at its formation and its presence at Zuni.

Other Santo Domingo and Hopi statements from the floor covered the destructive impacts of Federal legislation such as the 1872 Mining Law, another law which "gave away" Pebble Mountain (where Indians are now denied access to sacred sites), and others where no Indian consultation was sought

The State Archeologist, Curt Schaafsma, discussed the New Mexico Cultural Properties Act. It included any recognized cultural property regardless of ownership. Included in the language of the Act is the requirement that it must always be in conformity to Federal historic preservation laws. Listed properties can be kept confidential. Excavation is avoided if possible: purely scientific reasons are inadequate.

/s/ Jackson W. Moore, Jr.

Jackson W. Moore, Jr.

cc: Daniel J. Tobin, Jr., Associate Director-M & O
George A. Gowans, Chief-Office of Management Policy
F. Ross Holland, Jr., Assistant Director-Cultural Resources
Juanita Alvarez, Special Assistant-FWP
Suzan Harjo, Special Assistant-IA

United States Department of the Interior

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WASHINGTON, D.C. 20240

NOTICE OF RELIGIOUS FREEDOM CONSULTATION

University of Oklahoma
Oklahoma Memorial Student Union Building
Dining Room #6 - 900 Asp Street
Norman, Oklahoma
June 26 and 27, 1979 (Tuesday and Wednesday)
(Starting at 9:00 a.m. each day)

The American Indian Religious Freedom Act of 1978 sets forth the policy of the United States to protect and preserve the inherent right of American Indian, Eskimo, Aleut and Native Hawaiian people to believe, express and exercise their traditional religions.

The Act calls for an evaluation of the federal agencies' policies and procedures, as they affect the religious rights and cultural integrity of Native Americans, and requires that the President report the agencies' findings and recommendations to the Congress in August of this year. The preparation of this report accords us the opportunity to rethink antiquated governmental policies, to develop uniform approaches and procedures, and to measure existing practices against practical experience. The Act mandates that the evaluation be conducted in consultation with Native traditional religious leaders.

The Task Force to Implement the American Indian Religious Freedom Act will conduct a series of consultation meetings in June throughout the United States. The consultation in Oklahoma will focus on the use of natural products, animals and birds in religious ceremonies; access to ceremonial and religious areas; and Native tradition and custom in regard to educational and health facilities practices. The consultation and official record will be open to those wishing to address these subject areas, as well as other topics related to the Native religious concern.

For more information, please contact: Suzan Shown Harjo, Special Assistant to the Assistant Secretary - Indian Affairs (202-343-6031), or Clydia Nahwooksy, Director, Cultures and Arts of Native Americans (405-360-4420).

Forrest J. Gerard
Assistant Secretary - Indian Affairs

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

NOTICE OF RELIGIOUS FREEDOM CONSULTATION

Qualla Civic Center
Acquan Road
Eastern Band of Cherokee Indians
Qualla Boundary
Cherokee, North Carolina
June 29, 1979 (Friday)
(Starting at 9:00 a.m.)

The American Indian Religious Freedom Act of 1978 sets forth the policy of the United States to protect and preserve the inherent right of American Indian, Eskimo, Aleut and Native Hawaiian people to believe, express and exercise their traditional religions.

The Act calls for an evaluation of the federal agencies' policies and procedures, as they affect the religious rights and cultural integrity of Native Americans, and requires that the President report the agencies' findings and recommendations to the Congress in August of this year. The preparation of this report accords us the opportunity to rethink antiquated governmental policies, to develop uniform approaches and procedures, and to measure existing practices against practical experience. The Act mandates that the evaluation be conducted in consultation with Native traditional religious leaders.

The Task Force to Implement the American Indian Religious Freedom Act will conduct a series of consultation meetings in June throughout the United States. The consultation will focus on ceremonial protection and preservation of traditional, ceremonial and religious objects, customs, practices, sites and artifacts. The consultation and official record will be open to those wishing to address these subject areas, as well as other topics related to the Native religious concern.

For more information, please contact: Suzan Shown Harjo, Special Assistant to the Assistant Secretary - Indian Affairs (202-343-6031), or Maxine Hill, Museum of the Cherokee Indian (704-497-3481).

Forrest J. Gerard
Assistant Secretary - Indian Affairs

Great Smoky Mountains National Park
Gatlinburg, Tennessee 37738

IN REPLY REFER TO:
A3823

July 3, 1979

Memorandum

To: Regional Director, Southeast Region
Attention: Paul Swartz

From: Superintendent, Great Smoky Mountains

Subject: American Indian Religious Consultation, June 29, 1979

Pursuant to Mr. Swartz's telephone request of June 27, Great Smoky Mountains National Park provided a representative for subject meeting. Staff Park Specialist Roger Miller attended and submitted a report, copy of which is enclosed.

We are happy to have been of service in this matter and hope that our participation will bear fruit and better understanding of Indian affairs.

Merrill D. Beal
Merrill D. Beal

Enclosure

United States Department of the Interior

NATIONAL PARK SERVICE
Great Smoky Mountains National Park
Gatlinburg, Tennessee 37738

IN REPLY REFER TO:

July 2, 1979

Memorandum

To: Superintendent

From: Staff Park Specialist

Subject: The American Indian Religious Freedom Act of 1978

Mr. Woody Sneed - BIA, WASO, opened the meeting with introductory remarks welcoming participants. He said the meeting was to identify problem areas involving access to public lands for Indian religious activities and to identify sites important to those activities. Present at the meeting were: Duane King of Cherokee Museum, in behalf of the Cherokee Tribe; Bob Blankenship, Tribal Planner; Bill Fields, SWRO; Jim Ryan, SERO; Woody Sneed, BIA-WASO; Joe Wadkins, Interagency Archeological Center; Trish Oliveiras, TVA; and myself.

A statement was read by Duane King of the Cherokee Museum, in behalf of the Cherokee Tribe. The religious areas identified by him were all outside the Park; the major one being Chota, former capitol of the Cherokee Nation, located on the Little Tennessee River within the area where the Tellico Lake would be formed by closing the Tellico Dam. He pointed out that preservation of cemeteries was important as well as preservation of religious ritual sites.

He said in 1978 TVA archeological excavations were stopped at the request of the Cherokee Tribe. Trish Oliveiras of TVA said TVA was committed to reinterment of remains.

Duane King said that "Toqua," a religious river site, located in Monroe County, was similar to the Christian version of "Jonah and the Whale."

When asked if there were any Park related religious access or site preservation problems, Bob Blankenship replied that gathering ramps bordered on religious ceremony. He said that there had been some controversy over gathering them in the Park, but that meetings were held and the matter appeared to be resolved. He did say that ramps do not grow on the reservation and that Indians have to rely on getting them in the Park.

Bill Fields asked if squirrels were not a part of their religious ceremony and King said that they do have significance but according to Bob Blankenship supplying them is not a problem since State hunting seasons do not extend into the reservation.

Jim Ryan asked if there were any Indian cemeteries in the Park and Bob Blankenship said he knew of none.

Bill Fields suggested that a map be produced showing sacred ritual sites and cemeteries. Woody Sneed said maybe the medicine men of the tribe would not want to reveal their locations. Bob Blankenship said that might be true in some case.

The meeting adjourned until 1:30 p.m. for a presentation by Buffalo Tiger from Florida. At 1:30 p.m., Buffalo Tiger announced he could not stay for the presentation and left a written statement, copy attached.

This appeared to conclude the meeting and I left, though Woody Sneed said they would remain in session until 2 p.m. in the event others showed up.

Roger R. Miller

Roger R. Miller

Enclosure

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

NOTICE OF RELIGIOUS FREEDOM CONSULTATION

Reno/Sparks Tribal Facilities Building
34 Reservation Road
Reno, Nevada
June 30, 1979 (Saturday)
(Starting at 9:00 a.m.)

The American Indian Religious Freedom Act of 1978 sets forth the policy of the United States to protect and preserve the inherent right of American Indian, Eskimo, Aleut and Native Hawaiian people to believe, express and exercise their traditional religions.

The Act calls for an evaluation of the federal agencies' policies and procedures, as they affect the religious rights and cultural integrity of Native Americans, and requires that the President report the agencies' findings and recommendations to the Congress in August of this year. The preparation of this report accords us the opportunity to rethink antiquated governmental policies, to develop uniform approaches and procedures, and to measure existing practices against practical experience. The Act mandates that the evaluation be conducted in consultation with Native traditional religious leaders.

The Task Force to Implement the American Indian Religious Freedom Act will conduct a series of consultation meetings in June throughout the United States. The consultation will focus on protection and preservation of traditional, ceremonial and religious objects, customs, practices, sites and artifacts. The consultation and official record will be open to those wishing to address these subject areas, as well as other topics related to the Native religious concern.

For more information, please contact: Suzan Shown Harjo, Special Assistant to the Assistant Secretary - Indian Affairs (202-343-6031), or Harold Wyatt, Executive Director, Inter-Tribal Council of Nevada (702-786-3128).

Forrest J. Gerard

Assistant Secretary - Indian Affairs

United States Department of the Interior

NATIONAL PARK SERVICE
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

[illegible] 1979

A6423(500)

Memorandum

To: All Regional Directors and Managers, Harpers Ferry Center and Denver Service Center

Acting
From: Associate Director, Management and Operations

Subject: PL 95-341 Task Force Hearing Report, Reno, Nevada

The enclosed report is for your information. Like those distributed previously, it should be a useful supplement to the on-going park-level consultations with Native American traditional religious leaders.

Daniel J. Tobin, Jr.

Enclosure

cc: Herbst, Assistant Secretary FWP
Girard, Assistant Secretary IA

United States Department of the Interior

NATIONAL PARK SERVICE
WESTERN REGION
450 GOLDEN GATE AVENUE, BOX 36063
SAN FRANCISCO, CALIFORNIA 94102

IN REPLY REFER TO:
A6423
(WR)RC

JUL 24 1979

Memorandum

To: Regional Director, Western Region

Through: Chief, Division of Cultural Resource Management, Western Region TM 7/18

Through: Associate Regional Director, Resource Management and Planning, Western Region

From: Regional Archeologist, Western Region

Subject: PL 95-341, American Indian Religious Freedom Act of 1978 Task Force Hearings, Reno, Nevada, June 30, 1979

This hearing was chaired by Suzan Shown Harjo, Department Task Force Coordinator and Special Assistant to Assistant Secretary, Indian Affairs. The Task Force panel consisted of Ms. Harjo as Member with William Olsen (BLM), Richard Hanes (BLM), Jeff L. Kenyon (BUREC), and Roger Kelly (NPS) as agency representatives. A list of persons speaking is enclosed. About 25 persons attended the session which was recorded by a court reporter. There were many criticisms and complaints regarding the lack of publicity and advance announcements for the meeting (see enclosed announcement).

Principle points in testimony are summarized below with surnames of speakers:

1. "Shrines" and other types of heritage locations should have the same legal protection and standing as other types of historic or cultural resources. In modern times, many such places are outside of Native American communities' lands or control and should be afforded preservation. Village or burial sites on non-Federal lands are in greatest need of strong protection, both legal and surveillance. Federal actions such as establishment of Wilderness Areas can restrict utilization of heritage places, but is often done without Native American input. (Shattuck, Lucero, Johnson, d'Azevado, Smart)

2. "Spiritual Laws" of Mother Earth cannot be compared with Federal laws. Why should Native Americans trust this Public Law and the Government when other laws and Executive Orders have not been followed? Speakers opposed to any law that pertains to religious belief of Native Americans. (Smart, Shattuck, Lucero, DeLorme, Sampson)

3. The California Native American Heritage Commission and the Mariposa County Native American Council are attempting to perpetuate heritage and traditions in California. Major concerns of both groups are: access to heritage locations, protection of burial areas, clarification of artifact ownership and changing some State laws. Regardless of the age of the artifacts or burials, it is against beliefs to disturb or destroy and permanently "cart off" these materials. In Yosemite, the Mariposa Council has recently held its 5th annual kote or ritual gathering. The Council is now working on a census of the 400-500 Indian people in Mariposa County. The Council has been working with NPS since 1976 on General Management Plan aspects relating to Native American concerns. Although permitted use of basket-making plants has been much better recently than in the past, use of these resources in the park and elsewhere is another concern of the Council. (Johnson, Parker)

4. Acquisition and transfer to Native American groups of parcels of land containing heritage resources ("spiritual land") is one way Federal agencies can help preserve significant resources or sites. BLM has done this in California and the Task Force should look into this. Administrative actions on the local level are not legally equal to Congressional action in acquisitions or transfers. As an example, the current case of Edison Chiloquin in southern Oregon was discussed as a negotiated transfer involving Senator Ullman's office, local USFS and the Native American community. (Olsen, Clark, Cain, Shattuck)

5. The Act does not address the apparent conflict between religious freedom and freedom of scientific inquiry of citizens. Is Congressional action necessary for establishment of ways as to how archeologists/anthropologists and Native Americans can interact? Some knowledgable researchers at the local level refuse to become middlemen between agencies and Native Americans. A dilemma exists between Native American feelings about tribal cultural resources/sites and mandates of historic preservation legislation. Both archeologists and Native Americans seek preservation of cultural resources, but differ on scientific/spiritual meanings. (Gordon, d'Azevado, Kenyon, Gibb, Olsen, Hanes, Harjo, Johnson)

Most of the persons attending the meeting had little familiarity with the Act due to poor advance announcement. Governor Lucero, Commissioner Johnson, Professor d'Azevado and Federal agency representatives had read the document. At one point, Ms. Harjo requested that I outline the Western Region's consultation process, which I did, noting that each area Superintendent was attempting to contact appropriate local persons on compliance to the Act and related mutual concerns. Upon request, I gave a copy of the NPS Compliance Assessment document to the Governor of Isleta Pueblo.

Ms. Harjo summarized the Department Task Force timetable in July - August and the intent of the Act which was to remove illegal "roadblocks" to the practice of Native American religions and to foster the establishment of special arrangements or agreements from Federal agencies to Native American groups and individuals. The Act will not "return the North American Continent to the Indians" or redress past grievances. She cautioned that Native Americans should not expect these kinds of actions forced upon agencies by the Act but that the Act sets up those special relationships and arrangements for Native Americans so that those considerations cannot be said by others to be unconstitutional.

Roger E. Kelly

Roger E. Kelly, Ph.D.

Enclosures

Approved:

(SGD) JOHN H. DAVIS
ACTING Regional Director

JUL 24 1979
Date

cc.
WASO(400)--George Gowans
WASO(567)--Chief Anthropologist Scovill

Persons speaking at Reno, Nevada consultation on PL 95-341, American Religious Freedom Act of 1978, June 30, 1979

Steve Cain, Member of Reno/Sparks Colony community

Rod Clark, Citizen, Reno

Warren L. D Azevado, Anthropologist, University of Nevada

Thelma DeLorme, Member of Reno/Sparks Colony community

Robert Gibb, Attorney for Washo Tribe, Nevada

Garland Gordon, Interagency Archeological Services, HCRS, San Francisco

Richard Hanes, Bureau of Land Management Archeologist, Reno

Jay Johnson, Mariposa County Indian Council Commissioner, California Native American Heritage Commission

Roger E. Kelly, National Park Service Archeologist, San Francisco

Jeff L. Kenyon, Bureau of Reclamation Archeologist, Denver

Alvino Lucero, Governor of Isleta Pueblo, New Mexico

William H. Olsen, Bureau of Land Management Archeologist, Sacramento

Julia Parker, Member of Mariposa County Indian Council, Yosemite, California

Dewey Sampson, Member of Reno/Sparks Colony community

Paul Shattuck, Isleta Pueblo, New Mexico

Mr. Smart, Native American Church Elder, Nevada Shoshonean community

Several unidentified persons of Reno/Sparks Colony community

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Juneau Area Office
P. O. Box 3-8000
Juneau, Alaska 99801

July 19, 1979

Memorandum

To: Assistant Secretary for Indian Affairs
Attention: Susan Harjo - Code 100C

From: Area Director, Juneau Area Office

Subject: Consultation Session P.L. 95-341, July 12, 1979

The session was conducted at the Bureau of Indian Affairs Agency Conference room in Anchorage. The session was called to order at 10:15 a.m. by John Hope, Area Tribal Operations Officer. There were approximately thirty-five persons in attendance. A total of Twenty persons offered testimony. In addition to persons testifying, those in attendance included media people. Both the Anchorage Daily News and the Anchorage Times were represented; as was Channel 13 (KIMO), which gave footage on the evening news, and KUAC radio station for the University of Alaska, Fairbanks. Also, Ron McCoy from the Special Assistant to the Secretary's office and Ellen Hope Hays from the National Park Service attended the session.

All persons who wished to be heard were given ample opportunity to be heard.

Prior to the meeting a news release was issued and mailed to 546 village councils, village and regional corporations, non-profit corporations, and agencies announcing the meeting.

The response was good when considering the time of the year. Ideally, more lead time and appearances in such places as Barrow, Bethel, Kotzebue, Unalakleet, Ft. Yukon, and Juneau would prove more beneficial.

I am attaching a copy of the news release we issued, as well as a copy of the story appearing in the Anchorage Daily News.

Area Director

Attachments

BUREAU OF INDIAN AFFAIRS

JUNEAU AREA OFFICE
BOX 3-8000
JUNEAU, ALASKA 99802
Phone: (907) 586-7178

June 27, 1979

NEWS RELEASE

FOR IMMEDIATE RELEASE

Juneau, June 27 -- Alaska Natives will have an opportunity to voice their views on how federal agencies' policies and procedures affect traditional religious rights and cultural practices. That opportunity will come during a consultation in Anchorage Thursday, July 12. The session starts at 10 a.m. in the Bureau of Indian Affairs conference room, 1675 "C" Street.

The American Indian Religious Freedom Act of 1978 sets forth as government policy that the rights of American Indians, Eskimos, Aleuts and Native Hawaiians to believe, express and exercise their traditional religions will be protected and preserved.

One part of the Act requires an evaluation of federal agency policies and procedures in consultation with Natives. The Act also requires the President report to the Congress the results of the consultations. The July 12 session is in preparation for that report.

John Hope, chief of BIA's Tribal Operations Branch in Juneau, will conduct the consultation. "The Anchorage session will give Alaska Natives an opportunity to focus on ceremonial and traditional use of natural products, animals and birds which are important in the religious and cultural lifestyle of Alaska Natives," Hope said. "Persons making presentations will also be able to address access to traditional fishing, hunting and gathering areas," he continued.

Hope emphasized that the official record would be open to Natives wanting to talk about religious ceremonies and practices or any other topic related to Native religious concerns. Appointments are not required.

. . . END

Native American Rights Fund

AMERICAN INDIAN RELIGIOUS FREEDOM ACT

P.L. 95-341

Survey to Native Americans

The Native American Rights Fund is an Indian interest law firm whose primary concern is the preservation and protection of Indian rights and resources. In the past years, NARF has represented hundreds of Indian groups, Indian organizations, and tribal groups in legal matters pertaining to Indian law and Indian religion. Currently, NARF is involved in a project entitled "The American Indian Religious Freedom Act" (P.L. 95-341) which was signed into law by President Carter on August 11, 1978.

The purpose of P.L. 95-341 is to insure to the Native American the right to believe, express, and practice his religion in his traditional way by clearly establishing a comprehensive and consistent federal policy directed toward protecting and preserving Native American religious freedom. Historically, the lack of knowledge, unawareness, insensitivity and neglect have often been the keynotes of the federal government's interaction with traditional Indian culture and religion. Needless to say, many traditional Native Americans have been prohibited from exercising their right by federal policies and regulations -- in the access to religious sites, including cemeteries, use and possession of peyote and feathers, use and possession of sacred objects, harvesting of certain plants and herbs, and the freedom to worship through ceremonies and traditional rites.

These infringements have sometimes come about through the enforcement of policies and regulations based on laws which are basically sound and which many of the Native Americans strongly support.

Some of the federal laws involved are for the preservation of wilderness areas and the preservation of endangered species; others include the Antiquities Act, the Bald Eagle Act, and the Migratory Bird Treaty Act. Although the intentions of many of these laws were good, the results were sometimes devastating to traditional Native Americans. Congress, obviously, did not consider the impact of its legislation in regard to the religious freedom of Native Americans.

Among other things, it is the insensitive enforcement procedures and administrative policy directives which have interfered with the culture and religious practices of of Native Americans. As the result of these infringements and the lack of a clear federal policy, the President mandated, through the American Indian Religious Freedom Act, to direct the various federal agencies to review their policies and procedures and to identify any changes which would remedy this situation. Additionally, the President appointed a federal task force in the executive branch to investigate these problems and to recommend solutions, through the consultation with traditional Indian religious leaders. Following a twelve-month review, the task force will report back to the President and will prepare a final report to Congress.

In conjunction with this federal agency effort, NARF, the lead organization in the Implementation Project, will perform a parallel review of the affected federal agencies' policies and procedures, making certain the task force does not overlook any area of concern to the Native American, and recommending solutions, and suggesting any legislative changes deemed necessary. To broaden the base of tribal input, an Advisory Board has been selected to assist the Implementation Project. The Advisory Board is made up of fifteen persons with an interest in maintaining and preserving Native American religion. The board will be to the greatest extent possible representative of the religious and cultural interest of the American Indian, Eskimo, Aleut, and Native Hawaiian. They will be responsible in representing their group in providing NARF with issues of concern to their respective areas and possible solutions, as well as giving direction to the project.

Hopefully, the enclosed questionnaire will indicate which tribes or groups are experiencing problems with the following identified areas of concern: museums, sacred sites, border issues, use and possession of peyote and feathers, harvesting certain plants and herbs, and use and possession of skins, hooves, horn, and skulls in religious practices. The purpose of this survey is to : 1) inform your group of the American Indian Religious Implementation Project; 2) request that you supply us with input on the already identified issues; 3) provide us with any additional areas of concern related to the federal government, and which pertains to the practice of Indian religion; and, perhaps, put us in contact with native people in your area who could assist us in fulfilling our task.

We are very honored and proud to be able to work on a project of this nature and with the potential to assist so many Native Americans in reasserting their desire to practice their religion. We request your assistance in helping us to fulfill this mandate by answering as completely as possible the following survey questions:

SURVEY QUESTIONS

A. MUSEUMS

We have tentatively identified the following areas of concern: museums, sacred sites, and border issues. Many tribes have admitted having problems in retrieving religious artifacts belonging to their tribe. If that is the case here -- and if the artifacts are being held by a museum receiving federal funding, please answer the questions in this section.

1. Can you provide NARF with an inventory list of known religious artifacts identified by your tribe to be stored in museums? If so, what artifacts would you like to see returned to your tribe?

2. In the event they are returned, who will be responsible for their care?

3. Would these artifacts be again used in religious ceremonies? If not, where would they be kept?

4. Does your tribe operate a tribally-owned museum? If so, what is the methodology for categorizing, preserving, and storing the artifacts? (Give answer in detail)

5. If your answer to the above was yes, what kind of security do you employ in protecting artifacts? (Explain)

6. Can you provide the name, address, and curator of museums which retain your religious artifacts? (If known)

7. If known, how are these museums owned and financed? (Federal, State, private, church)

8. Are your artifacts on loan? If so, for how long?

9. If not on loan, how were they obtained from your tribe? Were they stolen, lost, bought, etc.? How long ago did the separation occur?

10. Are sacred objects (bundles, medicine bags, pipes, masks, dolls) opened for display contrary to your belief and/or objections? (Explain)

11. Can you state the religious significance of these sacred objects to your tribe? (Explain)

12. Has your tribe tried negotiating with museums in retrieving artifacts? If so, with what results?

13. Can you provide suggestions on how a common policy can be developed and established among tribes in retrieving pre- and post-historic remains and religious artifacts?

14. Some museums would be willing to release religious artifacts if they had the assurance that the artifacts would be properly cared for. Can your tribe give suggestions for guidelines in preserving and caring for artifacts to be utilized by all tribes?

15. If museums were unwilling to give back artifacts, could your tribe, or would your tribe be willing to, buy them back?

B. RELIGIOUS OBJECTS

Many tribes are unable to conduct religious ceremonies and rites, due to the prohibition of use and possession of certain animal parts, feathers, and harvesting certain plants. If that is the case here, please answer the questions in this section.

1. Identify religious and cultural activities, ceremonies, rituals, and the like, which require animal substance, animal parts, plants and other actual materials. What are these substances?

2. Identify problems with the law enforcement officials which Indians may have encountered in the collection of or possession of such items for use in such activities.

3. Please identify the law being applied, or known, also if there would be any problems too, for each tribe to come up with a list of the objects or articles used in any religious or cultural practice to supplement the list that is contained in the hearing appendix.

C. SACRED SITES

If your tribe is experiencing problems in accessing sacred sites and burial sites located on federally-owned land or parks, please answer the questions in this section.

1. Do you have or know of any endangered sacred sites which we should investigate? If so, where are they located?

2. How are these sites owned? (Tribe, private, State, Federal)

3. What significance do such sites hold and to what extent are they being utilized? (Explain)

4. What problems, if any, have you encountered in regards to these sites? (Explain)

5. What problems, if any, have you encountered in regards to burial sites? (Explain)

6. Have you had any problems relative to the desecration of burial sites? (To what extent)

7. Are you aware of any litigation or court order prohibiting desecration of burial sites or sacred sites? (Explain)

8. What is your policy in regard to removal of remains off the reservation?

9. Do you have any kind of agreement with the U.S. Corps of Engineers or any other federal agency for prior consent for removal of remains?

10. Do you have any kind of agreement with any group(s) of archaeologists regarding removal of remains?

11. Do you have any suggestions for a common policy among tribes for prior consent before excavation procedures begin? If so, what are they?

12. Identify any religious or cultural activities that require access to a specific site location. It would help if you would identify the site.

13. Identify problems with the law enforcement officials which Indians may have encountered in obtaining access to such site locations.

14. Identify the level of the law enforcement problem which may have occurred, whether federal, state or local. Identification of the law enforcement agency involved.

D. BORDER ISSUES

If your tribe or group is involved with border disputes (either U.S./Mexico or U.S./Canada) in a context involving the practice of Indian religion, kindly respond to the following questions:

1. Which border is your tribe/group involved with? What is the geographical location of your tribe/group?

2. Does the nature of your present problem relate to either the immigration or customs laws of the two countries?

3. Which federal agency is primarily involved?

4. Give us a comprehensive description of the nature of the problems. Are you aware of any Canadian-born Native American being denied the benefits of American citizenship (i.e. food stamps, A.F.D.S. payments, work permits, etc.)? If so, is this based upon a federal agency's assessment that such Canadian-born Native American is an alien? (Explain)

5. Have you any thoughts in regard to a proposed solution? If so, please pass that on to us.

Because we are under a time deadline, we would very much appreciate it if you would give this matter your immediate attention and return the survey to us within thirty days. If we can be of any assistance, please call (303) 447-8760.

Thank you very much for your assistance in this matter.

9/14/78